

ESTTA Tracking number: **ESTTA707504**Filing date: **11/09/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060849
Party	Defendant Sunkiss Thermoreactors Inc.
Correspondence Address	REBECCA J STEMPIEN COYLE LEVY & GRANDINETTI PO BOX 18385 WASHINGTON, DC 20036-8385 UNITED STATES mail@levygrandinetti.com
Submission	Motion for Sanctions
Filer's Name	Rebecca Stempien Coyle
Filer's e-mail	mail@levygrandinetti.com
Signature	/Rebecca Stempien Coyle/
Date	11/09/2015
Attachments	Sunkiss.Rule 11.092115.pdf(116729 bytes) 0-Cert.Svc.R 11.service.092115.pdf(63575 bytes) Rule 11_Exhibit 1_Aug 28 and Sept 10 emails.pdf(381958 bytes) Rule 11_REDACTED_Exhibit 2.pdf(13012 bytes) Rule 11_Exhibit 3_Finam Initial Disclosures.pdf(45376 bytes) Rule 11_REDACTED_Exhibit 4.pdf(13025 bytes) Rule 11_Exhibit 5_TSI Resp Interrog.pdf(153167 bytes) Rule 11_REDACTED_Exhibit 6.pdf(16389 bytes) Rule 11_Exhibit 7_CA proceedings.pdf(225306 bytes) Rule 11_Exhibit 8_Finam CA TM filings.pdf(181745 bytes) Rule 11_Exhibit 9_Finam production 1.pdf(4532075 bytes) Rule 11_REDACTED_Exhibit 10.pdf(13018 bytes) Rule 11_REDACTED_Exhibit 11.pdf(13017 bytes) Rule 11_REDACTED_Exhibit 12.pdf(13017 bytes) Rule 11_Exhibit 13_TSI Resp Admissions.pdf(49941 bytes) Rule 11_Exhibit 14_Finam 1st Set Discovery.pdf(183261 bytes) Rule 11_Exhibit 15_Finam 2d Set Discovery.pdf(81414 bytes) Rule 11_REDACTED_Exhibit 16.pdf(13018 bytes) Sunkiss.RULE 11.Addendum.110915.pdf(77237 bytes) Rule 11_Exhibit 17_KM 100515 Ltr.pdf(1989262 bytes) Rule 11_Exhibit 18_RJSC 110215 Ltr.pdf(59507 bytes) Rule 11_Exhibit 19_KM 110415 email.pdf(83714 bytes) Rule 11_Exhibit 20_RJSC 110915 email.pdf(100744 bytes) 0-Cert.Svc.R 11.service.110915.pdf(65865 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,)	
)	
Petitioner,)	
	)	Cancellation No. 92/060,849
v.)	
	)	Reg. No. 1,200,333
Sunkiss Thermoreactors, Inc.,)	
	)	Mark: SUNKISS
Registrant.)	
_____)	

**REGISTRANT’S MOTION FOR SANCTION UNDER
FED. R. CIV. P. 11, 37 C.F.R. § 11.18, AND TBMP 527.02**

The Registrant, Sunkiss Thermoreactors, Inc. (“Registrant” or “TSI”), pursuant to FED. R. CIV. P. 11, 37 C.F.R. § 11.18, and TBMP 527.02, respectfully moves for an order sanctioning the Petitioner, FINAM (“Petitioner” or “FINAM”). Specifically, TSI requests that the Trademark Trial and Appeal Board (the “Board”) sanction FINAM for filing and pursuing a baseless and frivolous petition to cancel lacking any colorable legal theory or factual support and that appears to have been brought, and subsequently maintained, solely for the purposes of harassment.

Counsel for TSI has made a good faith effort to resolve the issues presented in this motion with FINAM counsel, but the parties were unable to resolve their differences. Specifically, pursuant to the provisions of FED. R. CIV. P. 11(c)(1)(A), 37 C.F.R. § 11.18(c), and TBMP 527.02(c), TSI served this motion for sanctions upon FINAM on September 21, 2015, prior to filing the motion with the Board. FINAM did not withdraw its challenged petition for cancellation, or provide adequate explanation of how its petition might be colorable, within 21 days after service of the motion.

I. FACTUAL BACKGROUND

FINAM is related to a company called Sunkiss SAS. *See* Composite Exhibit 1.¹ In October 2009 Sunkiss SAS assigned the mark at issue, Registration No. 1,200,333 (the “Mark”), to TSI. Exhibit 2.² Indeed, as part of the same agreement Sunkiss SAS assigned its similar marks and registrations in Canada and Mexico to TSI. *Id.* Mr. Charmes, as President of Sunkiss SAS, was the officer who executed the assignment to TSI. *Id.* Mr. Charmes was the only individual identified by FINAM in its original Initial Disclosures.³ *See* Exhibit 3. FINAM further instructed TSI that Mr. Charmes was to be contacted only through FINAM’s counsel. *Id.* Mr. Daniel Ayotte, the President of TSI, executed the assignment of the Mark on behalf of TSI. *Id.* Mr. Ayotte is also the owner of the companies Ayotte Techno-Gaz (“Techno-Gaz”) and American Industrial Ovens (“American Industrial”) (collectively, the “Distributors”). Exhibits 4 and 5.

Messrs. Charmes and Ayotte had a business relationship for many years prior to the formation of TSI. Indeed, Mr. Charmes, through Sunkiss SAS, used Mr. Ayotte and Techno-Gaz as distributors for products under the Mark. Sunkiss SAS (again with Mr. Charmes as the signatory) entered into a distribution agreement with Techno-Gaz wherein Techno-Gaz would

¹ During a call between counsel for the Parties preceding these emails, it was explained that FINAM acquired the company that acquired Sunkiss SAS and that these entities were all owned by Mr. Michael Charmes.

² Some of the agreements offered as exhibits are in French only. TSI appreciates that the Board requires English translations. However, for purposes of this motion, the agreements are offered primarily to show the signatories and dates of execution.

³ Only after TSI alerted FINAM to TSI’s concerns and the possibility of serving this motion did FINAM supplement its initial disclosures to identify one other individual, who is also to only be contacted through FINAM’s counsel. There is no indication that this new individual is with a company unrelated to FINAM.

distribute the products under the Mark in the United States, almost two years before Sunkiss SAS assigned the Mark to TSI. *Compare* Exhibits 2 and 6.

Sometime around 2011 or 2012 the business relationship between Messrs. Charmes and Ayotte turned sour. Then, in February 2015 FINAM brought the current petition to cancel the Mark against TSI, its own sub-subsidiary. Around the same time FINAM, through its Canadian counsel McMillan LLP, brought parallel proceedings in Canada against the Canadian counterpart of the Mark and the THERMOREACTEUR mark owned by TSI in Canada.⁴ *See* Composite Exhibit 7. Both of these Canadian marks were assigned to TSI by Sunkiss SAS as per Exhibit 2. Just prior to its adversarial filings, on January 12, 2015, FINAM filed applications in the United States and Canada (through McMillan LLP) for the same set of trademarks: SUNKISS and SUNKISS THERMOREACTORS. *See* Composite Exhibit 8 and Dkt. 1, Exhibits A and B.

FINAM's petition in this proceeding pleads only abandonment – and there is little detail explaining how FINAM came to believe TSI abandoned the Mark. All of the arguably “factual” allegations in the petition regarding TSI are based upon FINAM's “information and belief.” *See* Dkt. 1. FINAM's initial disclosures offered no insight on its possible bases for asserting abandonment. *See* Exhibit 3. As noted *supra*, FINAM's original initial disclosures identified only one individual with relevant knowledge to its accusations: Mr. Charmes. *Id.* Moreover, the only category of documents arguably identified by FINAM in its initial disclosures was “[d]ocuments . . . related to the parties' respective rights in the SUNKISS trademark.” *Id.* As will be addressed in more detail *infra*, any documents regarding who has ownership of the Mark are irrelevant to what has been pled and even can be pled in this proceeding.

⁴ The notice for the proceeding against the THERMOREACTEUR mark was January 2015, while the notice for the proceeding against the SUNKISS mark was June 2015. Composite Exhibit 7.

In due course each party served discovery requests. TSI's requests were focused on the factual bases for each of FINAM's allegations in the petition. FINAM relied exclusively on its 82-page document production, even in response to the interrogatories. The produced documents fall into one of four categories:

- (1) TSI's brochure, AmericanOvens.com website, photographs and invoices – all items that TSI previously produced (*see* Composite Exhibit 9);
- (2) Three agreements between Sunkiss SAS and TSI (including the distribution agreement and then the subsequent license agreement from Sunkiss SAS to TSI), as well as the February 2008 distribution contract between TSI and Techno-Gaz (*see* Composite Exhibit 10);
- (3) E-mail correspondence from November 2011 through February 2012, between Mr. Charmes and Techno-Gaz regarding payments of some kind from Techno-Gaz (*see* Composite Exhibit 11); and
- (4) E-mail correspondence from November 30, 2011, through March 2012, between Messrs. Charmes and Ayotte regarding ending or restructuring their current agreements and establishing a new working relationship (*see* Composite Exhibit 12).⁵

In contrast, FINAM propounded an excessive number of initial discovery requests on TSI, including 31 interrogatories, 77 requests for documents, and 33 requests for admission. *See* Exhibit 14. TSI responded to these voluminous discovery requests in good faith, providing

⁵ No English translations of these e-mails were produced by FINAM. However, TSI is not offering the e-mails for the truth of the matters asserted therein. Rather TSI proffers them to show the extent, or lack thereof, of FINAM's discovery responses. TSI further note that the names and dates of the e-mails clearly establish that the Parties' officers, Messrs. Charmes and Ayotte, were in contact and Mr. Charmes contacted Techno-Gaz after the assignment of the Mark to TSI.

interrogatory answers, answers to admissions, and document production. Among the responses by TSI was an explanation that Techno-Gaz and American Industrial distribute space heaters under and pursuant to the Mark in the United States with the permission of and agreements with TSI. Exhibit 5, especially Answers to Interrogatories 5 and 23-24 (*see also* Exhibit 13, especially Responses to Request Nos. 7-8); *see also* Exhibit 4. TSI further explained that TSI itself, Techno-Gaz, and American Industrial are all commonly owned by Mr. Ayotte, that there are quality standards in place for Techno-Gaz and American Industrial (namely, the Distributors receive their products from TSI, TSI retains right to inspect premises and verify compliance with performance and quality standards), and that TSI has first-hand knowledge as to the Products offered under the Mark by the Distributors, as well as their pricing, quality, and other details. Exhibit 5, especially Answers to Interrogatories 5, 17, 19, 20, 22-25; *see also* Exhibit 13, especially Responses to Request Nos. 9-14 and 23.

On August 28, 2015, counsel for the Parties met to discuss various discovery issues. During this call TSI expressed its confusion as to how any of FINAM's document production supported an abandonment claim. TSI then came to understand that FINAM's abandonment theory was two-fold: (1) a question as to whether the use of the Mark by Techno-Gaz and American Ovens inured to TSI, and (2) a question as to who is the actual owner of the Mark between Messrs. Charmes and Ayotte and their companies. TSI then reminded FINAM that TSI's discovery responses clearly explain that the use of the Mark by Techno-Gaz and American Ovens does inure to TSI. TSI also expressed its confusion as to why any purported "question of ownership" mattered since, even if there was a question, that is not a matter for abandonment nor had FINAM pled any "ownership" basis for its petition. TSI invited FINAM to reconsider maintaining its petition and/or explain why there was any factual and legal basis to its petition.

See Exhibit 1. As of the date of service of this motion on FINAM, no such explanation has been received. Rather, FINAM responded with a bald statement that TSI “failed to come forth with sufficient documentation to establish its continued use of” the Mark “to overcome the pleaded cause of action” **and served even more** discovery requests (12 more requests for documents and 15 more interrogatories), including requests clearly duplicative of FINAM’s first set of requests and/or clearly irrelevant (such as inquiring into other trademarks). *See* Exhibits 1 (September 10, 2015 e-mail from Ms. Mogavero to Ms. Stempien Coyle) and 15; *compare* Exhibits 14 and 15. Moreover, a group to which FINAM is a part (GROUPE SUNKISS) served on September 11, 2015, in Canada a demand letter (served without prejudice) on TSI alleging trademark infringement of the Mark and a second trademark, SUNSPOT. The demand letter further includes numerous assertions of contractual violations regarding the use of technology and an assertion by GROUPE SUNKISS’s lawyers that the February 7, 2008, distribution contract between Sunkiss SAS and Techno-Gaz is being terminated with immediate effect as per GROUPE SUNKISS’s demand letter. Curiously, this unrelated SUNSPOT mark is featured in FINAM’s recent discovery requests. *See* Exhibit 15, Interrogatory Nos. 6-9 and Request for Production Nos. 9-10.

Most recently FINAM filed a Motion for Leave to File an Amended Petition for Cancellation (FINAM’s “Motion for Leave”). Dkt. 11. FINAM’s Motion for Leave confirms TSI’s understanding of FINAM’s misguided, unsupported and untenable theories on this case. In its Motion for Leave FINAM seeks to add a counterclaim asserting TSI is not the owner of the Mark (based entirely on documents that have always been in FINAM’s possession, custody or control) *and* explains that its abandonment theory is TSI has engaged in naked licensing. *See Id.* The requested “new” claim is legally untenable and frivolously sought. *See* Section II.B.

Moreover as explained *supra*, any assertion of naked licensing by TSI is void of any factual support in light of the evidence provided by TSI explaining the quality control standards in place between it and its Distributors. FINAM has produced no evidence whatsoever to rebut this evidence let alone come close to carrying its burden.

II. ARGUMENT

A. Legal Standard

Pursuant to FED. R. CIV. P. 11 (b), one who presents or later advocates a pleading to a court certifies that the pleading is:

- (1) **not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;**
- (2) **the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument** for extending, modifying, or reversing existing law or for establishing new law;
- (3) **the allegation and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support** after a reasonable opportunity for further investigation or discovery.

FED. R. CIV. P. 11(b) (emphasis added). Under Rule 11(c), the court may impose an appropriate sanction upon a determination that Rule 11(b) has been violated. FED. R. CIV. P. 11(c).

Similarly, pursuant to C.F.R. § 11.18, one who files or later advocates a document with the Patent and Trademark Office certifies that:

- (b) (2) (I) **The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office;**
 - (ii) **The other legal contentions therein are warranted by existing law or by a nonfrivolous argument** for the extension, modification, or reversal of existing law or the establishment of new law;
 - (iii) **The allegation and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support** after a reasonable opportunity for further investigation or discovery.

37 C.F.R. § 11.18(b)(2) (emphasis added). Violations of Section (b)(2) subject the violator to sanctions or actions deemed appropriate by the USPTO Director, “which include, but are not limited to any combination of: (1) Striking the offending paper; (2) Referring a practitioner’s conduct to the Director of Enrollment and Discipline for appropriate action; (3) Precluding a party or practitioner from submitting a paper, or presenting or contesting an issue; (4) Affecting the weight given to the offending paper, or (5) Terminating the proceedings in the Office.”

37 C.F.R. § 11.18(c).

Here, TSI requests that the Board impose all form of sanctions that it deems appropriate, though TSI expressly requests that this proceeding be terminated.

B. FINAM’s Petition to Cancel Is Frivolous and Harassing to TSI

To the extent that FINAM’s petition to cancel is brought on a theory that there is a “question” as to the “ownership” of the Mark, this legal contention is unwarranted by existing law and there is no nonfrivolous argument to modify or reverse the existing law. As an initial matter, FINAM never pled, or even suggested in its petition, that the “ownership” of the Mark is questionable. FINAM, of course, cannot maintain a petition based on an unpled legal theory. TBMP 314.

More fundamental, though, is clear case law that questions of ownership are **not permissible** grounds for a petition to cancel a registration more than five years old. 15 U.S.C. § 1064(3); *see also Treadwell’s Drifters Inc. v. Marshak*, 18 U.S.P.Q.2d 1318, 1320 (T.T.A.B. 1990), and *Kemin Industries, Inc. v. Watkins Products, Inc.*, 192 U.S.P.Q. 327, 328-29 (T.T.A.B. 1976). Here, the Mark was registered in 1982 and has been registered for more than 32 years. There is no existing law that supports FINAM’s legal theory that a “question” as to the “ownership” of the Mark warrants the existing petition to cancel. FINAM’s efforts to bring such

a claim, coupled with the additional time and expense of responding to FINAM's futile Motion to Amend, was frivolous.

FINAM's second ground for pursuing this cancellation proceeding may look colorable at first glance, but a focused look at the relevant facts demonstrates the contrary. It is implausible to believe that Mr. Charmes and/or FINAM were not aware of TSI's relationships with Techno-Gaz and American Oven. Mr. Charmes, as President of Sunkiss SAS, had for a significant number of years dealt with Mr. Ayotte, through Techno-Gaz, as a distributor of products under the Mark in the United States prior to TSI's ownership of the Mark and dealings with Techno-Gaz. Mr. Charmes is also a partial owner in TSI. On February 7, 2008, the same date that Mr. Charmes, as President of Sunkiss SAS, executed a "license" agreement with TSI and a distribution agreement with Techno-Gaz, TSI itself executed a distribution agreement with Techno-Gaz. *See* Exhibits 4, 6, and 16.

Even if there was some legitimate "doubt" that the use of the Mark by Techno-Gaz and/or American Industrial did not inure to TSI, such doubt is fully dispelled by TSI's discovery responses. As noted *supra*, TSI explained that TSI itself, Techno-Gaz, and American Industrial are all commonly owned by Mr. Ayotte, that there are quality standards in place for Techno-Gaz and American Industrial, and that TSI has first-hand knowledge as to the Distributors' use of the Mark. *See* Exhibits 5 and 13.

FINAM cannot offer and, as of the date this motion was served, has not even tried to offer any cognizable legal theory or remaining factual questions that would support a theory that the Distributors' use of the Mark does not inure to TSI. Prior to the service of this motion, all FINAM asserted was that the TSI's evidence (which included invoices of sales in the United States and explanations of the entities offering space heaters under the Mark to the benefit of

TSI) was insufficient to overcome the “pleaded cause of action.” Composite Exhibit 1, Sept. 10, 2015, e-mail from Ms. Mogavero to Ms. Stempien Coyle. However, FINAM never explained what exactly was insufficient with these documents to overcome FINAM’s pleaded allegations which were primarily based only upon “information and belief.” FINAM even asserts in its recently sought Motion to Amend that TSI engaged in naked licensing. *See* Dkt. 11. However FINAM has presented no evidence whatsoever of naked licensing nor has FINAM asserted that any individual has factual knowledge of any naked licensing.⁶

As the petitioner **it is FINAM’s burden** to prove abandonment by a preponderance of the evidence. *Crash Dummy Movie LLC v. Mattel Inc.*, 601 F.3d 1387 (Fed. Cir. 2010).⁷ FINAM has provided no evidence to date to support an abandonment claim, and it is not TSI’s job to suffer through a lengthy, time consuming, and expensive proceeding while FINAM fishes for something from TSI to support FINAM’s claims when TSI has already provided evidence of ongoing sales and an explanation of how use of the Mark inures to TSI’s benefit.

A party’s duty to comply with the requirements of FED. R. CIV. P. 11 is ongoing. Fed. R. Civ. P. 11, Advisory Committee Notes to 1993 Amendment (the rule “emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable” and “a litigant’s obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include

⁶ In response to TSI’s interrogatories seeking the factual bases for FINAM’s allegations FINAM relied exclusively on the production of documents.

⁷ The ultimate burden on its abandonment claim remains with FINAM. This is true *even if* there was a prima facie case of abandonment creating a rebuttable presumption of abandonment causing a shift in the burden. *Crash Dummy Movie LLC*, 601 F.3d 1387. However, this partial shifting in burdens is not even applicable as FINAM has not established a prima facie case of abandonment.

reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit”).

TSI was unable to locate any case law from the Board on point. However, the majority of federal district courts are in agreement that the obligations of Rule 11 are continuous or ongoing and apply to the maintenance of a proceeding that is frivolous. *See, e.g., Rodriguez v. Banco Cent.*, 155 F.R.D. 403, 407 (D.P.R. 1994) (court held that the plaintiffs’ attorneys earned sanctions by “continuing to litigate [the] case when it became clear that any viable legal theory . . . had long before been foregone” as to some of the defendants and “[t]he remaining legal claim had no basis in fact”); *Int’l Union v. Aguirre*, 410 F.3d 297, 304 (6th Cir. 2005) (sanction imposed under pre-1993 Rule 11 for pursuing claim after discovery had revealed that it was factually meritless, despite the fact that plaintiff had withstood a motion to dismiss); *Ideal Instrs., Inc. v. Rivard Instrs., Inc.*, 243 F.R.D. 322, 342 (N.D. Iowa 2007) (duty of a party to assess the evidentiary viability of a claim under Rule 11 is not measured solely at the time the claim was valid but is a continuing one); *Gambello v. Time Warner Communications, Inc.*, 186 F. Supp. 2d 209 (E.D.N.Y. 2002) (sanctions appropriate where a defendant persisted in argument flatly contradicted by the plaintiff’s deposition testimony); *Perry v. S.Z. Rest. Corp.*, 45 F. Supp. 2d 272, 274-75 (S.D.N.Y. 1999) (sanctions appropriate for pursuing claim that had survived two summary judgment motions; information plaintiffs received from defendants would have prompted an objectively reasonable attorney to make a more thorough investigation of his client), *appeal dismissed*, 201 F.3d 432 (2d Cir. 1999); *Fahrenz v. Meadow Farm Partnership*, 850 F.2d 207 (4th Cir. 1988) (pursuit of cause of action objectively frivolous after three key witnesses repudiated their earlier accusations which had formed the basis for amended complaint, and plaintiff’s counsel acted unreasonably in filing brief in opposition to summary

judgment once this evidence came to light); *B & H Med., L.L.C. v. ABP Admin., Inc.*, 526 F.3d 257 (6th Cir. 2008) (district court did not abuse its discretion in imposing FED. R. CIV. P. 11 sanctions against attorney for plaintiff company in antitrust lawsuit because company and its attorney pursued obviously meritless antitrust lawsuit long beyond time at which discovery demonstrated that company's claims lacked support); *Farino v. Advest, Inc.*, 111 F.R.D. 345 (E.D.N.Y. 1986) (Rule 11 was violated when plaintiff's attorney insisted on pursuing claim after defendants offered explanations and evidence to show that there were no grounds for action and plaintiff had no evidence to the contrary); *Blossom v. Blackhawk Datsun, Inc.*, 120 F.R.D. 91 (S.D. Ind. 1988) (sanctions imposed when claim should have been dropped for lack of factual support); *Denny v. Hinton*, 131 F.R.D. 659 (M.D.N.C. 1990) (plaintiff's attorney violated Rule 11 when it failed to dismiss certain defendants after plaintiff should have realized that claims against particular defendants were wholly invalid and no reasonable basis existed to form a belief of the defendants' liability). The Board should apply the same ongoing standard and find that the maintenance of a cancellation proceeding after discovery reveals there is no factual basis for a claim is sanctionable under FED. R. CIV. P. 11 and 37 C.F.R. § 1.18.

In addition to FINAM's unwarranted and unsupportable legal theories for bringing and maintaining this proceeding, FINAM's other actions strongly indicate the proceeding was brought for improper purposes including harassing TSI and needlessly increasing TSI's costs. In a span of six months FINAM brought three attacks to cancel TSI's trademark rights (all for marks in both Canada and the United States that Mr. Charmes, as President of Sunkiss SAS, assigned to TSI in 2009). Moreover, FINAM has provided virtually no discovery in this proceeding. Yet it has placed an undue and enormous discovery burden on TSI consisting of, as of the date of service of this motion, 89 document requests, 46 interrogatories and 33 requests for

admission. Not content with inundating TSI with discovery requests, including numerous requests for information and/or documents that FINAM itself has access to, FINAM has recently served a demand letter on TSI in Canada alleging trademark infringement and other purported wrongs. This letter was served only *after* TSI provided its good faith responses to FINAM's first voluminous round of discovery requests. This leads to the conclusion that FINAM was seeking to have TSI not only defend itself from FINAM's amorphous allegations of abandonment, but to go further and improperly provide FINAM with any reason for FINAM to support its baseless petition in this proceeding and bolster its footing for the recent allegations in Canada. Finally, FINAM filed a legally unsupported Motion to Amend in an effort to add a futile claim - requiring TSI to expend time and resources in opposing the baseless motion when a quick and simple review of the law would have revealed the futility in FINAM's Motion to Amend.⁸

The numerous and conveniently timed attacks against TSI, coupled with the unsupported nature of FINAM's claims in this proceeding, lead to the conclusion that FINAM's purpose behind its petition to cancel is to harass TSI and force TSI to spend time and money defending FINAM's various attacks.

⁸ TSI further notes the timing of FINAM's Motion to Amend is suspect. As noted *supra* the Motion to Amend is based entirely on documents that have always been in FINAM's possession. Additionally, FINAM brought this Motion to Amend only after TSI provided advance notice of TSI's intent to bring a Rule 11 Motion. These combined facts suggest FINAM was trying to avoid the clock ticking on a Rule 11 Motion, knowing it was likely to be served.

III. CONCLUSION

For the reasons set forth above, TSI respectfully requests that, pursuant to FED. R. CIV. P. 11, 37 C.F.R. § 11.18, and TBMP 527.02, the Board impose appropriate sanctions against FINAM based on its bringing and maintaining baseless, frivolous, and harassing proceeding against TSI.

Respectfully submitted,

September 21, 2015
Date

/s/ Rebecca J. Stempien Coyle
Rebecca J. Stempien Coyle
Paul Grandinetti
LEVY & GRANDINETTI
P.O. Box 18385
Washington, D.C. 20036-8385
Telephone (202) 429-4560
Facsimile (202) 429-4564

Attorneys for Registrant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S MOTION FOR SANCTIONS UNDER FED. R. CIV. P. 11, 37 C.F.R. § 11.18, AND TBMP 527.02 served this date by e-mail and first class mail, postage prepaid, on the Petitioner's attorneys as follows:

Ms. Kristen A. Mogavero
Ms. Jess M. Collen
COLLEN IP INTELLECTUAL PROPERTY LAW PC
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562

September 21, 2015
Date

/s/ Rebecca J. Stempien Coyle
Rebecca J. Stempien Coyle

EXHIBIT 1

Paul Grandinetti

From: Paul Grandinetti
Sent: Friday, August 28, 2015 8:15 PM
To: 'Kristen Mogavero'
Subject: Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc.

Dear Kristen:

It was a pleasure speaking earlier today. Pursuant to our call today I am confirming that FINAM will:

- (1) Provide Sunkiss Thermoreactors Inc. ("TSI") a list of the bates/production numbers it would like TSI to consider re-designating or un-designating;
- (2) Provide TSI with some sort of proof that Sunkiss SAS and FINAM are related and that Sunkiss SAS approves designating the agreements to which Sunkiss SAS is a party as Confidential, and therefore able to be viewed by FINAM;
- (3) Confirm and provide TSI with the bates/production numbers of the documents that FINAM contends are illegible, or difficult to read;
- (4) Update TSI on whether FINAM will be providing certified English translations of any of FINAM's documents produced in French; and
- (5) Confirm whether FINAM will be supplementing any of its discovery responses or production.

TSI now understands that FINAM's abandonment allegation is based on two different theories: (1) there was a question whether the use of the mark by Ayotte Techno-Gaz and American Ovens inured to the benefit of TSI and/or (2) there is a question as to the correct ownership of the mark at issue in relation to TSI and Sunkiss SAS. As stated during our call today, it is TSI's position that the documents and answers provided in response to FINAM's discovery requests clearly establish that the use of the mark by Ayotte Techno-Gaz and American Ovens did indeed inure to the benefit of TSI. Additionally, any questions of "correct ownership" is not encompassed by abandonment and has not been plead by FINAM. Therefore, it appears that FINAM no longer has any legally cognizable theory, or facts to support any theory, for pursuing its petition to cancel and the petition should be dismissed. The continuance of the proceeding would be, at the least, frivolous and in violation of Rule 11 and the TTAB's similar rules. Of course, we will consider any explanation from FINAM as to why there remains a non-frivolous theory for this proceeding.

Regards,
Rebecca Stempien Coyle

Levy & Grandinetti
1120 Connecticut Ave NW
Suite 304
Washington DC 20036

Tel. (202) 429-4560
Fac. (202) 429-4564
mail@levygrandinetti.com

Paul Grandinetti

From: Kristen Mogavero <kmogavero@collenip.com>
Sent: Thursday, September 10, 2015 10:36 PM
To: Paul Grandinetti
Subject: RE: FINAM v Sunkiss Thermoreactors Inc. - verification page
Attachments: R224_Ltr to OpCnsl encl Documents_150910.PDF

Dear Rebecca,

I confirm receipt of the verification for Registrant's Interrogatory responses.

Without prejudice or admission, our response to the points raised in your email of August 28 are as follows:

- (1) Provide Sunkiss Thermoreactors Inc. ("TSI") a list of the bates/production numbers it would like TSI to consider re-designating or un-designating;**
 - a. SUNKISS000181-182 These are PTO records which are public record and should not be designated confidential
 - b. SUNKISS000224-246 These look like advertisements or promotional materials of some sort, do they need to be trade secret/commercially sensitive?
 - c. SUNKISS000295-306 This also appears to be a promotional brochure, do they need to be trade secret/commercially sensitive?
- (2) Provide TSI with some sort of proof that Sunkiss SAS and FINAM are related and that Sunkiss SAS approves designating the agreements to which Sunkiss SAS is a party as Confidential, and therefore able to be viewed by FINAM;**
 - a. The relevant contracts to which Sunkiss SAS is a party have been transferred to Sunkiss Matherm Radiation which is wholly owned by FINAM; both of those parties consent to the disclosure and designation of the contracts as confidential (as opposed to trade secret/commercially sensitive).
- (3) Confirm and provide TSI with the bates/production numbers of the documents that FINAM contends are illegible, or difficult to read;**
 - a. SUNKISS000287, 291-293
- (4) Update TSI on whether FINAM will be providing certified English translations of any of FINAM's documents produced in French;**
 - a. FINAM expects to provide certified English translations.
- (5) Confirm whether FINAM will be supplementing any of its discovery responses or production.**
 - a. FINAM encloses herewith its supplemental document production. FINAM reserves its right to amend or supplements its responses pursuant to FRCP 26 and the corresponding rules of the Board.

I also enclose herewith Petitioner's Amended Initial Disclosures, Second Set of Interrogatories, and Second Request for the Production of Documents and Things. (Also being served via first class mail.)

Lastly, I note your statements referring to our basis for proceeding. Not only is relief for the Registrant unavailable under the theories you posit, but pursuit of any such theories under these facts would, in and of themselves, be lacking in good faith and subjecting your side to all of the appropriate remedies and sanctions. STI has failed to come forth with sufficient documentation to establish its continued use of the SUNKISS mark in association with space heaters in the United States to overcome the pleaded cause of action.

Regards,
Kristen

From: Paul Grandinetti [<mailto:mail@levygrandinetti.com>]
Sent: Tuesday, September 08, 2015 3:32 PM
To: Kristen Mogavero
Subject: FINAM v Sunkiss Thermoreactors Inc. - verification page

Dear Kristen:

Per our call August 28, 2015, attached is the verification page for SUNKISS's responses to FINAM's first set of interrogatories. If you need everything as one big PDF please let me know.

Regards,
Rebecca Stempien Coyle

Levy & Grandinetti
1120 Connecticut Ave NW
Suite 304
Washington DC 20036

Tel. (202) 429-4560
Fac. (202) 429-4564
mail@levygrandinetti.com

EXHIBIT 2

REDACTED

***(DOCUMENT FILED UNDER SEAL
CONTAINS CONFIDENTIAL INFORMATION)***

EXHIBIT 3



Telephone (914) 941-5668

Facsimile (914) 941-6091

www.collenIP.com

E-mail: kmogavero@collenIP.com

June 4, 2015

BY FIRST CLASS MAIL

COPY BY E-MAIL: mail@levygrandinetti.com

Levy & Grandinetti

PO Box 18385

Washington, DC 20036-8385

Attention: Ms. Rebecca J. Stempien Coyle

Re: Cancellation Proceeding No. 92060849

FINAM v Sunkiss Themoreactors, Inc.

Mark : SUNKISS

Our Ref. : R224

Dear Ms. Coyle:

Enclosed please find Petitioner's Initial Disclosures in the above-referenced proceeding.

Very truly yours,
Collen IP


Kristen A. Mogavero

KAM:mcm

Enclosure: Initial Disclosures

p:\R\R2\R224_EPF Petitioner's Initial Disclosures_150604.docx

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849

Reg. No.: 1,200,333

Petitioner's Initial Disclosures

Pursuant to 37 C.F.R. § 2.120 and Fed. R. Civ. P. 26, Petitioner FINAM (hereafter, "Petitioner") hereby makes its initial disclosures:

A. INDIVIDUALS (26(a)(1)(A)):

At this time, Petitioner is aware of the following individuals who are likely to have discoverable information that Petitioner may use to support its claims asserted in the Petition for Cancellation, excluding information to be used solely for impeachment, and identifying the subjects of the information:

(1) Michel Charmes, 4 rue Eugene Collonge, 69 370 Saint Didier Au Mont D'Or, France. Mr. Charmes has knowledge as to the corporate relationship between the parties and relevant third parties, including agreements which pertain to the use and ownership of the SUNKISS trademark. Petitioner may be contacted through the undersigned counsel of record.

(2) Any other individuals with knowledge of the parties and their respective use and ownership of the SUNKISS trademark, including employees, suppliers, and customers.

B. DOCUMENTS (26(a)(1)(B)):

At this time, Petitioner is aware of the following categories of documents that are in its possession, custody or control that Petitioner may use to support its claims asserted in the Petition for Cancellation, excluding documents to be used solely for impeachment:

- (1) Documents, including but not limited to emails, contracts and agreements related to the parties' respective rights in the SUNKISS trademark.
- (2) Any other documents which may be relevant to the disputed facts alleged with particularity in the pleadings.

Respectfully submitted,

Date: June 4, 2015

By: *Kristen Mogavero*
Jess M. Collen
Kristen A. Mogavero
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining-on-Hudson, NY 10562
Tel: (914) 941-5668
Fax: (914) 941-6091
kmogavero@collenip.com

CERTIFICATE OF SERVICE

I, Meaghan Machcinski, hereby certify that a true and complete copy of the foregoing Petitioner's Initial Disclosures has been served by via First Class Mail, postage prepaid, and by e-mail, a copy thereof on June 4, 2015 to the following address:

Levy & Grandinetti
PO Box 18385
Washington, DC 20036-8385
Attn.: Ms. Rebecca J. Stempien Coyle
mail@levygrandinetti.com

A handwritten signature in black ink, appearing to read 'Meaghan Machcinski', is written over a horizontal line.

EXHIBIT 4

REDACTED

***(DOCUMENT FILED UNDER SEAL
CONTAINS CONFIDENTIAL INFORMATION).***

EXHIBIT 5

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,)	
)	
Petitioner,)	
	)	Cancellation No. 92/060,849
v.)	
	)	Reg. No. 1,200,333
Sunkiss Thermoreactors, Inc.,)	
	)	Mark: SUNKISS
Registrant.)	
_____)	

**REGISTRANT’S OBJECTIONS AND RESPONSES TO
PETITIONER’S FIRST SET OF INTERROGATORIES**

The Registrant, Sunkiss Thermoreactors, Inc. (“Registrant”), by and through counsel, responds to the Petitioner’s First Set of Interrogatories as follows.

The Registrant’s answers are based upon information currently available to it. The Registrant’s investigation and discovery in this action are ongoing, and the Registrant reserves the right to supplement these answers in the event that additional information is obtained through such investigation or discovery.

Nothing contained in these answers is intended to be or should be construed to be an admission by the Registrant of the relevance or admissibility at trial or on any motion of any information contained in these answers.

GENERAL OBJECTIONS AND RESPONSES

The Registrant’s responses are made subject to, and without waiver of, the following general objections as well as any specific objection(s) stated for each request.

1. The Registrant objects to each interrogatory to the extent that it seeks information that is protected from discovery by the attorney-client privilege, the work-product doctrine, or

any other applicable privilege or immunity. These responses are not intended to be, or may not be deemed in any way to be, a waiver of any such available privilege or immunity.

2. The Registrant objects to the Petitioner's definitions, instructions, and interrogatories to the extent that they impose burdens or obligations differing from or adding to those required by the FEDERAL RULES OF CIVIL PROCEDURE (FED. R. CIV. P.) or the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP), including the purported obligations on the Registrant to "identify" documents and things prior to their production and "identify" contact information for persons or entities represented by counsel. The Registrant's responses will be prepared in accordance with both the FED. R. CIV. P. and the TBMP.

3. The Registrant objects to each interrogatory to the extent that it seeks information and identification of documents that are already in the Petitioner's possession or that are publicly available and therefore accessible to the Petitioner.

4. The Registrant objects to each interrogatory to the extent that it seeks information that is not in the Registrant's possession, custody, or control.

5. The Registrant objects to each interrogatory to the extent that it seeks identification of documents that have been prepared by or reviewed by experts or consultants who have not yet been designated to testify on behalf of the Registrant.

6. The Registrant objects to each interrogatory to the extent it seeks confidential information concerning services developed by the Registrant that are not at issue in this proceeding and/or other information that is not reasonably calculated to lead to the discovery of admissible evidence relevant to a claim or defense of any party.

7. The Registrant objects to the Petitioner's interrogatories to the extent that they are duplicative of the Petitioner's document requests.

8. The Registrant objects to the Petitioner's interrogatories to the extent they seek the identification of electronically stored information that is not reasonably accessible and would be unduly burdensome or expensive to produce.

9. The Registrant objects to the Petitioner's interrogatories to the extent they seek discovery of confidential and/or competitive information, including, for example, documents containing trade secrets, development or confidential information and will produce only such documents in accordance with the Protective Order agreed to by the Parties, and approved by the TTAB on August 6, 2015.

10. The Registrant objects to the Petitioner's interrogatories to the extent they seek information related to any promotional materials, uses of trademarks or service marks, services, goods, contracts, or other agreements, in or under development, consideration, or negotiation. Such information is neither relevant to any claims or defenses asserted in this proceeding, nor reasonably likely to lead to the discovery of admissible evidence.

11. The Registrant objects to the Petitioner's definition of "Petitioner" to the extent that it presumes or requires knowledge on the part of the Registrant as to all of FINAM's divisions, departments, subsidiaries, parents, partners, joint venture partners, officers, directors, owners, agents, employees, accountants, attorneys, predecessors or successors in interest and other persons acting on behalf of or for the benefit of FINAM.

12. The Registrant objects to the Petitioner's definition of "Goods" and "Products" as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it includes items the Registrant "intends" to market, distribute or divide. The Registrant further objects to the Petitioner's definition of "Goods" and "Products" as overbroad, unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence to the extent that it includes items that are not identified in Registration No. 1,200,333. The Registrant will apply the following definition to “Goods” and “Products”: space heaters as identified in Registration No. 1,200,333.

13. The Registrant objects to the Petitioner’s definition of “identify” or “specify” or “state the identity of” as overbroad, unduly burdensome, requires waiver of applicable privileges, and not reasonably calculated to lead to the discovery of admissible evidence. The Registrant further objects to the definition of “identify” or “specify” or “state the identity of” on the ground that it purports to create an obligation beyond the requirements of FED. R. CIV. P. and TBMP. The Registrant further objects to the Petitioner’s definition of “identify” or “specify” or “state the identity of” to the extent the definition undermines, contradicts, or purports to prohibit the Registrant’s right to produce documents in response to an interrogatory pursuant to FED. R. CIV. P. 33.

14. The Registrant objects to the Petitioner’s instruction “M” as overbroad and unduly burdensome to the extent that it requires the waiver of applicable privileges. The Registrant further objects on the ground that it purports to create an obligation beyond the requirements of FED. R. CIV. P. and TBMP.

15. The Registrant’s responses to each interrogatory regarding the Registrant will include, unless otherwise noted, any entity that is using the Registrant’s Mark on behalf of the Registrant and/or to the benefit of the Registrant.

16. Any objection or lack of objection to an interrogatory is not to be deemed an admission by the Registrant that it is aware of information that is requested by the interrogatory.

17. Pursuant to FED. R. CIV. P. 26(e) the Registrant will supplement responses as additional information becomes available to the Registrant.

18. The Registrant objects to the Petitioner's interrogatories to the extent that they seek a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States. For this responses, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States.

SPECIFIC RESPONSES

The Registrant responds to the Petitioner's interrogatories as follows, subject to the general objections stated above and the specific objections stated below.

1. Identify each place of business which Registrant presently maintains in connection with trademark usage or trademark licensing in the United States, and describe the type of business activities in each place of business.

RESPONSE TO INTERROGATORY NO. 1

The Registrant objects to Interrogatory No. 1 as vague and ambiguous with respect to the terms "presently maintains" and "in connection with." The Registrant further objects to this interrogatory to the extent that it is unduly burdensome and oppressive in seeking a description of "the type of business activities in each place of business." The Registrant further objects to this interrogatory to the extent it seeks information that is not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence, including information related to "the type of business activities in each place of business." The Registrant will respond to this interrogatory to the extent that it seeks the identification of each location maintained by the Registrant where some aspect of the manufacture, advertising, use, sale, or offers to sell of the Product or licensing of the Registrant's Mark are conducted. The Registrant will further respond to this interrogatory by

stating what type of business activities relevant to the use or licensing of the Registrant's Mark. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

The Registrant currently maintains a place of business located at 2223 Route 131 Nord, Norte-Dame de Lourdes, Quebec J0K1K0, Canada in connection with all "trademark usage or trademark licensing in the United States" for the Registrant's Mark. Ayotte Techno-Gaz Inc. currently rents space in a warehouse, located at 1320 State 9 Champlain, New York 12919.

2. Identify any assignment, license, distribution agreement, or other permitted use agreements with respect to any Products bearing the SUNKISS mark of which Registrant is aware.

RESPONSE TO INTERROGATORY NO. 2

The Registrant objects to Interrogatory No. 2 as vague and ambiguous as to the terms "aware" and "the SUNKISS mark" and with respect to the terms "Product" and "SUNKISS mark." The Registrant will respond to this interrogatory applying the following definition to the term "SUNKISS mark": "the Registrant's Mark." The Registrant will respond to this interrogatory applying the following definition to the term "Products:" space heaters as identified in Registration No. 1,200,333. The Registrant will respond to this interrogatory to the extent that it seeks an identification of any assignment, license, distribution agreement, or other permitted use agreements in the United States with respect to any Products bearing the SUNKISS mark of which the Registrant has first-hand knowledge. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the Registrant will produce non-privileged documents from which the requested information can be derived or ascertained, in the manner set forth in the Registrant's responses to the Petitioner's first set of requests for production.

3. Identify any United States trademark applications or registrations owned by Registrant which incorporate the term "Sunkiss."

RESPONSE TO INTERROGATORY NO. 3

The Registrant objects to Interrogatory No. 3 as vague and ambiguous. The Registrant will respond to this interrogatory to the extent that it seeks the identification of any live federal United States trademark applications or registrations owned by Registrant which incorporate the term "Sunkiss." The Registrant further objects to this interrogatory to the extent that it seeks information and identification of documents that are publicly available and therefore publicly accessible to the Petitioner. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

The Registrant owns Registration No. 1,200,333.

4. Identify any assignment, license, distribution agreement, or other permitted use agreements to which Registrant and Ayotte Techno-Gaz Inc are parties and which references the intellectual property (including but not limited to trademarks) of either or both parties.

RESPONSE TO INTERROGATORY NO. 4

The Registrant objects to Interrogatory No. 4 as duplicative of at least Interrogatory No. 2. The Registrant further objects to this interrogatory as vague and ambiguous with respect

to the term “references.” The Registrant further objects to this interrogatory to the extent it seeks information that is not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence, including information related to intellectual property other than the Registrant’s Mark. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the Registrant will produce non-privileged documents from which the requested information can be derived or ascertained, in the manner set forth in the Registrant’s responses to the Petitioner’s first set of requests for production.

5. Identify any assignment, license, distribution agreement, or other permitted use agreements to which Registrant and American Industrial Ovens are parties and which references the intellectual property (including but not limited to trademarks) of either or both parties.

RESPONSE TO INTERROGATORY NO. 5

The Registrant objects to Interrogatory No. 5 as duplicative of at least Interrogatory No. 2. The Registrant further objects to this interrogatory as vague and ambiguous with respect to the term “references.” The Registrant further objects to this interrogatory to the extent it seeks information that is not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence, including information related to intellectual property other than the Registrant’s Mark. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

The Registrant and American Industrial Ovens share a common owner, who is also the Director of both companies, Mr. Daniel Ayotte. While there are no written agreements between the Registrant and American Industrial Ovens, there is an oral understanding and implied license between the companies allowing American Industrial Ovens to use the Registrant's Mark in the United States.

6. Identify and describe each Product Registrant sells under the SUNKISS mark.

RESPONSE TO INTERROGATORY NO. 6

The Registrant objects to Interrogatory No. 6 to the extent that it is duplicative of at least Interrogatory No. 3. The Registrant further objects to this interrogatory as vague and ambiguous with respect to the terms "Product" and "SUNKISS mark." The Registrant will respond to this interrogatory applying the following definition to the term "SUNKISS mark": "the Registrant's Mark." The Registrant will respond to this interrogatory applying the following definition to the term "Products:" space heaters as identified in Registration No. 1,200,333. The Registrant further objects to this interrogatory to the extent that it seeks information and identification of documents that are publicly available and therefore publicly accessible to the Petitioner. The Registrant further objects to this interrogatory to the extent that it seeks the identification of Products that the Registrant no longer sells under its Mark and has voluntarily cancelled from the Registration. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the Registrant will produce non-privileged documents from which the requested information can be derived or

Mr. Daniel Ayotte is the person with the Registrant with knowledge of the dates and circumstances about the nature of the Registrant's business including the advertising, marketing, manufacturing, sales and/or licensing of Products bearing the SUNKISS mark. Mr. Ayotte is to be contacted only through counsel.

Upon information and belief Mr. Michel Charmes is knowledgeable about the nature of the Registrant's business including the advertising, marketing, manufacturing, sales and/or licensing of Products bearing the SUNKISS mark.

12. Identify each person having knowledge of the dates and/or circumstances surrounding Registrant's creation, adoption, and/or acquisition of the SUNKISS marks.

RESPONSE TO INTERROGATORY NO. 12

The Registrant objects to Interrogatory No. 12 as vague and ambiguous with respect to the term "circumstances surrounding." The Registrant further objects to this interrogatory as vague and ambiguous with respect to the term "SUNKISS marks." The Registrant will respond to this interrogatory applying the following definition to the term "SUNKISS marks": "the Registrant's Mark." The Registrant further objects to this interrogatory to the extent that it is unduly burdensome and oppressive in seeking the identification of "each person having knowledge" and is not limited to the identification of the person(s) who are or have been employed by the Registrant with the most knowledge. The Registrant further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence, including information related to the Registrant's creation, adoption, and/or acquisition of the SUNKISS marks regardless of what goods or products were

associated with the SUNKISS marks. The Registrant will respond to this interrogatory to the extent that it seeks the identification of each person at, or previously employed by, the Registrant with first-hand knowledge of the dates and/or details of the Registrant's creation, adoption, and/or acquisition of its SUNKISS Mark for the Products. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

Mr. Daniel Ayotte is the person with the Registrant with knowledge of the dates and circumstances surrounding the Registrant's acquisition of the Registrant's Mark. Mr. Ayotte is to be contacted only through counsel.

Upon information and belief Mr. Michcel Charmes, Mr. Jean Jacques Charmes and/or Mr. Yvon Pithon have knowledge about the dates and/or circumstances surrounding Registrant's creation, adoption, and/or acquisition of the Registrant's Mark.

13. For each Product identified by Registrant in response to Interrogatory No. 6 as being sold under the SUNKISS mark, set forth the amount of sales in dollars in the United States for the past ten years, broken down on a yearly basis.

RESPONSE TO INTERROGATORY NO. 13

The Registrant objects to Interrogatory No. 13 to the extent that it is unduly burdensome and oppressive in seeking the identification of "the amount of sales in dollars in the United States for the past ten years." The Registrant further objects to this interrogatory as vague and ambiguous with respect to the terms "Product" and "SUNKISS mark. The Registrant will respond to this interrogatory applying the following definition to the term "Products:" space heaters as identified in Registration No. 1,200,333. The Registrant will respond to this interrogatory applying the following definition to the term "SUNKISS mark": "the Registrant's

19. For each Product identified in response to Interrogatory No. 17, identify the manufacturer or supplier from which Ayotte Techno-Gaz acquires said Product.

RESPONSE TO INTERROGATORY NO. 19

The Registrant objects to Interrogatory No. 19 as vague and ambiguous with respect to the terms “Product” and “SUNKISS mark.” The Registrant will respond to this interrogatory applying the following definition to the term “Products:” space heaters as identified in Registration No. 1,200,333. The Registrant will respond to this interrogatory applying the following definition to the term “SUNKISS mark”: “the Registrant’s Mark.” The Registrant further objects to this interrogatory to the extent that it seeks information or the identification of information that is not within the Registrant’s possession, custody, or control. The Registrant further objects to this interrogatory to the extent it seeks information that is not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

All Products offered or sold by Ayotte Techno-Gaz Inc. under or otherwise bearing the Registrant’s Mark are acquired from the Registrant.

Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the Registrant will produce non-privileged documents from which the requested information can be derived or ascertained, in the manner set forth in the Registrant’s responses to the Petitioner’s first set of requests for production.

20. Identify and describe each Product American Industrial Ovens sells under the SUNKISS mark.

RESPONSE TO INTERROGATORY NO. 20

The Registrant objects to Interrogatory No. 20 as vague and ambiguous with respect to the terms “Product” and “SUNKISS mark.” The Registrant will respond to this interrogatory applying the following definition to the term “Products:” space heaters as identified in Registration No. 1,200,333. The Registrant will respond to this interrogatory applying the following definition to the term “SUNKISS mark”: “the Registrant’s Mark.” The Registrant further objects to this interrogatory to the extent that it seeks information or the identification of information that is not within the Registrant’s possession, custody, or control. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

The Registrant has first-hand knowledge that American Industrial Ovens sells and offers to sell space heaters under Registrant’s Mark in the United States. These space heaters sold and offered by American Industrial Ovens are the same as the space heaters described in response to Interrogatory No. 6, and the Registrant incorporates that description herein.

Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the Registrant will produce non-privileged documents from which the requested information can be derived or ascertained, in the manner set forth in the Registrant’s responses to the Petitioner’s first set of requests for production.

21. For each Product identified by Registrant in response to Interrogatory No. 20 as being sold under the SUNKISS mark, set forth the number of units sold in the United States for the past ten years, broken down on a yearly basis.

RESPONSE TO INTERROGATORY NO. 21

The Registrant objects to Interrogatory No. 21 to the extent that it is unduly burdensome and oppressive in seeking the identification of “the number of units sold in the United States for the past ten years.” The Registrant further objects to this interrogatory as vague and ambiguous with respect to the terms “Product” and “SUNKISS mark.” The Registrant will respond to this interrogatory applying the following definition to the term “Products:” space heaters as identified in Registration No. 1,200,333. The Registrant will respond to this interrogatory applying the following definition to the term “SUNKISS mark”: “the Registrant’s Mark.” The Registrant further objects to this interrogatory to the extent that it is unduly burdensome and oppressive and seeks information that is not kept in the regular course of business. The Registrant further objects to this interrogatory to the extent that it seeks information or the identification of information that is not within the Registrant’s possession, custody or control. The Registrant did not acquire ownership of the Registration until 2009. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the Registrant will produce non-privileged documents from which the requested information can be derived or ascertained, in the manner set forth in the Registrant’s responses to the Petitioner’s first set of requests for production.

22. For each Product identified in response to Interrogatory No. 20, identify the manufacturer or supplier from which Ayotte Techno-Gaz acquires said Product.

RESPONSE TO INTERROGATORY NO. 22

The Registrant objects to Interrogatory No. 22 as vague and ambiguous with respect to the terms “Product” and “SUNKISS mark.” The Registrant will respond to this interrogatory applying the following definition to the term “Products:” space heaters as identified in Registration No. 1,200,333. The Registrant will respond to this interrogatory applying the following definition to the term “SUNKISS mark” - “the Registrant’s Mark.” The Registrant further objects to this interrogatory as vague and ambiguous with respect to its inquiry into the manufacturer or supplier for “Ayotte Techno-Gaz” for the Products identified in response to Interrogatory No. 20. The Registrant will respond to this interrogatory to the extent that it seeks the identification of the manufacturer or supplier from which American Industrial Ovens acquires each Product identified in response to Interrogatory No. 20. The Registrant further objects to this interrogatory to the extent that it seeks information or the identification of information that is not within the Registrant’s possession, custody, or control. The Registrant further objects to this interrogatory to the extent it seeks information that is not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

All Products offered or sold by American Industrial Ovens under or otherwise bearing the Registrant’s Mark are acquired from the Registrant.

Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the Registrant will produce non-privileged documents from which the requested information can be derived or ascertained, in the manner set forth in the Registrant’s responses to the Petitioner’s first set of requests for production.

23. Identify and explain the corporate relationship, if any, between Registrant and Ayotte Techno-Gaz.

RESPONSE TO INTERROGATORY NO. 23

The Registrant objects to Interrogatory No. 23 as vague and ambiguous with respect to the terms “explain” and “corporate relationship.” Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

Ayotte Techno-Gaz Inc. is a distributor for the Registrant in the United States. Ayotte Techno-Gaz Inc. and the Registrant are commonly owned by Mr. Daniel Ayotte. Mr. Ayotte is the sole shareholder of 9063-8974 Quebec Inc., who is the sole shareholder of Ayotte Techno-Gaz Inc.. Mr. Ayotte is the majority shareholder of 9140-3543 Quebec Inc., who is a 50% shareholder of the Registrant. Mr. Ayotte is the director of both the Registrant and Ayotte Techno-Gaz Inc.

24. Identify and explain the corporate relationship, if any, between Registrant and American Industrial Ovens.

RESPONSE TO INTERROGATORY NO. 24

The Registrant objects to Interrogatory No. 24 as vague and ambiguous with respect to the terms “explain” and “corporate relationship.” Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

American Industrial Ovens is a distributor for the Registrant. The Registrant manufactures space heaters in Canada for sale under the Registrant’s Mark in the United States. American Industrial Ovens and the Registrant are commonly owned by Mr. Daniel Ayotte. Mr. Ayotte is the sole shareholder of 9063-8974 Quebec Inc., who is the sole shareholder of

American Industrial Ovens/Fours Industriels Américains Inc. Mr. Ayotte is the majority shareholder of 9140-3543 Quebec Inc., who is a 50% shareholder of the Registrant. Mr. Ayotte is the director of both the Registrant and American Industrial Ovens. American Industrial Ovens is used by Mr. Ayotte as the face of his operation in the United States, rather than the French name Ayotte Techno-Gaz Inc., because he considered Ayotte Techno-Gaz Inc. was not relatable in the English-speaking United States.

25. Identify and explain the corporate relationship, if any, between Ayotte Techno-Gaz and American Industrial Ovens.

RESPONSE TO INTERROGATORY NO. 25

The Registrant objects to Interrogatory No. 25 as vague and ambiguous with respect to the terms “explain” and “corporate relationship.” The Registrant further objects to this interrogatory to the extent that it seeks information or the identification of information that is not within the Registrant’s possession, custody or control. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

American Industrial Ovens and Ayotte Techno-Gaz Inc. are commonly owned by Mr. Daniel Ayotte. Mr. Ayotte is the sole shareholder of 9063-8974 Quebec Inc., who is the sole shareholder of both American Industrial Ovens/Fours Industriels Américains Inc. and Ayotte Techno-Gaz Inc. Mr. Ayotte is the directors of both Ayotte Techno-Gaz Inc. And American Industrial Ovens.

26. Identify all outlets through which third-parties sell Products under the SUNKISS mark. Identify any assignment, license, distribution agreement, or other permitted use

specifically, with reference to Interrogatory numbers, the areas of participation of each such person.

RESPONSE TO INTERROGATORY NO. 31

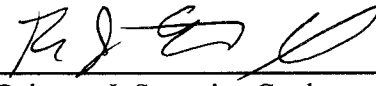
The Registrant objects to Interrogatory No. 31 as vague and ambiguous with respect to the term “participated in any way.” The Registrant will respond to this interrogatory to the extent that it seeks the identification of persons who participated in a meaningful or substantive manner, and not merely in a *de minimis* manner, such as forwarding of correspondence that the person did not write, read, or otherwise review. Subject to and without waiving the foregoing objections and its General Objections, the Registrant provides the following response.

Mr. Ayotte participated in the preparation of the answer or responses to these Interrogatories.

These objections and responses are served by counsel for Registrant, Sunkiss
Thermoreactors, Inc.

Respectfully submitted,

August 10, 2015
Date



Rebecca J. Stempien Coyle
Paul Grandinetti
LEVY & GRANDINETTI
P.O. Box 18385
Washington, D.C. 20036-8385
Telephone (202) 429-4560
Facsimile (202) 429-4564


Attorneys for Registrant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Registrant's Objections and Responses to
Petitioner's First Set of Interrogatories was served this date by first class mail, postage prepaid,
and e-mail on the Petitioner's attorneys as follows:

Ms. Kristen A. Mogavero
Ms. Jess M. Collen
COLLEN IP INTELLECTUAL PROPERTY LAW PC
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
kmogavero@collenip.com

August 10, 2015
Date


Rebecca J. Stempien Coyle

VERIFICATION

I, Daniel Ayotte, the Director of Sunkiss Thermoreactors, Inc., have read the foregoing Registrant's Objections and Responses to Petitioner's First Set of Interrogatories and know their contents. The statement are true and correct and are of my own personal knowledge, except for those matters stated to be upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

August 12, 2018
Date

A handwritten signature in black ink, appearing to read 'D. Ayotte', written over a horizontal line.

Daniel Ayotte
Director
Sunkiss Thermoreactors, Inc.

EXHIBIT 6

REDACTED

***(DOCUMENT FILED UNDER SEAL
CONTAINS CONFIDENTIAL INFORMATION)***

EXHIBIT 7



Office de la propriété
intellectuelle
du Canada

Un organisme
d'Industrie Canada

50, rue Victoria
Place du Portage I
Gatineau (Québec) K1A 0C9

Canadian
Intellectual Property
Office

An Agency of
Industry Canada

50 Victoria Street
Place du Portage I
Gatineau, Quebec K1A 0C9

SUNKISS THERMOREACTORS INC.
180, Arboit Street
L'Assomption
QUÉBEC J5W 4P5

Date	22 janv/Jan 2015
Votre référence - Your File	
Notre référence - Our File	1008533
Numéro d'enregistrement - Registration Number	TMA571,218
Date d'enregistrement - Registration Date	25 nov/Nov 2002

Marque de commerce - Trade-mark

THERMOREACTEUR

Objet: PROCÉDURES SELON L'ARTICLE 45

Conformément à l'article 45 de la *Loi sur les marques de commerce*, le propriétaire inscrit de la marque de commerce susmentionnée doit fournir une preuve d'emploi dans les **trois mois** de la date du présent avis. La preuve d'emploi doit être sous forme d'affidavit ou de déclaration solennelle et doit démontrer :

- l'emploi de la marque de commerce enregistrée au Canada à un moment quelconque au cours des trois ans précédant la date de cet avis, à l'égard de chacune des marchandises / chacun des services que spécifie l'enregistrement et, dans la négative;
- la date à laquelle la marque de commerce enregistrée a été employée pour la dernière fois et la(les) raison(s) de son défaut d'emploi depuis cette date.

Pour plus d'information concernant la pratique du registraire relativement à la procédure prévue à l'article 45, veuillez consulter l'énoncé de pratique *Pratique régissant la procédure de radiation prévue à l'article 45* disponible sur le site web de l'Office de la propriété intellectuelle du Canada à www.opic.gc.ca.

Re: SECTION 45 PROCEEDINGS

In accordance with s. 45 of the *Trade-marks Act*, the registered owner of the above trade-mark is required to furnish evidence within **three months** from the date of this notice. The evidence must be in the form of an affidavit or a statutory declaration and should demonstrate:

- use of the registered trade-mark in Canada at any time during the three year period immediately preceding the date of this notice with respect to each of the wares/services specified in the registration and, if not;
- the date when the registered trade-mark was last used in Canada and the reason(s) for the absence of use since that date.

For information concerning the Registrar's practice in section 45 proceedings, please consult the practice notice *Practice in Section 45 Proceedings* available on the Canadian Intellectual Property Office's website at www.cipo.ic.gc.ca.



Office de la propriété
intellectuelle
du Canada

Un organisme
d'Industrie Canada

Canadian
Intellectual Property
Office

An Agency of
Industry Canada

page: 2

Si le propriétaire inscrit ne produit aucune preuve d'emploi en réponse à cet avis, l'enregistrement est passible d'être radié et le registraire rendra une décision finale de radier l'enregistrement de la marque de commerce conformément à l'article 45(3) de la *Loi sur les marques de commerce*.

If the registered owner does not file any evidence in response to this notice, the registration is liable to be expunged and the Registrar will issue a final decision expunging the trade-mark registration in accordance with s. 45(3) of the *Trade-marks Act*.

Registraire des marques de commerce
Registrar of Trade-marks

POUR RENSEIGNEMENTS / FOR INFORMATION

opic.ic.gc.ca / cipo.ic.gc.ca

819-997-7300

cc: MCMILLAN LLP
1000 SHERBROOKE STREET WEST
27TH FLOOR
MONTREAL
QUEBEC H3A 3G4

Partie requérante/Requester:

MCMILLAN LLP


Ref: 233737

cc: BCF S.E.N.C.R.L./BCF LLP
1100, boul. René-Lévesque Ouest
25e Étage
Montréal
QUEBEC H3B 5C9

Ref:

Canada

www.opic.ic.gc.ca
www.cipo.ic.gc.ca SUNKISS000308

OPIC  CIPO

APPL'N/DEM. NO 1 008 533

REGISTRATION/ENREGISTREMENT NO TMA571,218

FILING DATE/DATE DE PRODUCTION:

15 mars/Mar 1999

REGISTRATION DATE/DATE D'ENREGISTREMENT:

25 nov/Nov 2002

REGISTRANT/PROPRIÉTAIRE ORIGINAL:

SUNKISS
SOCIÉTÉ ANONYME
6/10 BOULEVARD DES MONTS D'OR
69580 SATHONAY CAMP
FRANCE

CURRENT OWNER/PROPRIÉTAIRE COURANT:

SUNKISS THERMOREACTORS INC.
180, Arboit Street
L'Assomption
QUÉBEC
J5W 4P5

REP FOR SERVICE/REP POUR SIGNIFICATION:

BCF S.E.N.C.R.L./BCF LLP
1100, boul. René-Lévesque Ouest
25e Étage
Montréal
QUÉBEC H3B 5C9

TRADE-MARK/MARQUE DE COMMERCE:

THERMOREACTEUR

WARES/MARCHANDISES:

Appareils de séchage, fusion et polymérisation, nommément: émetteurs d'énergies infrarouge et convectionnelle générées par combustion catalytique pour utilisation dans des applications industrielles telles que le séchage, la fusion et/ou la polymérisation de différentes matières; éléments de chauffage catalytique pour être utilisés dans le domaine du chauffage de bâtiments et/ou de locaux.

CLAIMS/REVENDEICATIONS:

Employée au CANADA depuis 04 juin 1980 en liaison avec les marchandises.

FOOTNOTES/NOTES:

CHANGE IN TITLE/CHANGEMENT DU TITRE:

TYPE OF CHANGE/GENRE DE CHANGEMENT: MERGER/FUSIONNEMENT
DATE REGISTERED/DATE DE L'ENREGISTREMENT: 09 nov/Nov 2006
DATE OF CHANGE/DATE DE CHANGEMENT: 21 janv/Jan 2005
COMMENTS/COMMENTAIRES: FROM: SUNKISS
SOCIÉTÉ ANONYME
TO: A.J.C.
(société par actions simplifiée)

Voir Preuve au dossier/See evidence on File No. 1008533

APPL'N/DEM. NO 1 008 533

REGISTRATION/ENREGISTREMENT NO TMA571,218

CHANGE IN TITLE/CHANGEMENT DU TITRE:

TYPE OF CHANGE/GENRE DE CHANGEMENT: NAME AND ADDRESS/NOM ET ADRESSE

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 09 nov/Nov 2006

DATE OF CHANGE/DATE DE CHANGEMENT: 29 sept/Sep 2006

COMMENTS/COMMENTAIRES: FROM: A.J.C.

(société par actions simplifiée)

TO: SUNKISS

Voir Preuve au dossier/See evidence on File No. 1008533

CHANGE IN TITLE/CHANGEMENT DU TITRE:

TYPE OF CHANGE/GENRE DE CHANGEMENT: ASSIGNMENT/CESSION

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 18 janv/Jan 2010

DATE OF CHANGE/DATE DE CHANGEMENT: 07 oct/Oct 2009

COMMENTS/COMMENTAIRES: FROM: SUNKISS

TO: SUNKISS THERMOREACTORS INC.

Voir Preuve au dossier/See evidence on File No. 448571



Office de la propriété
intellectuelle
du Canada

Un organisme
d'Industrie Canada

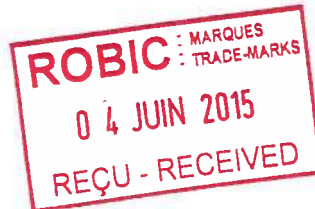
50, rue Victoria
Place du Portage I
Gatineau (Québec) K1A 0C9

Canadian
Intellectual Property
Office

An Agency of
Industry Canada

50 Victoria Street
Place du Portage I
Gatineau, Quebec K1A 0C9

SUNKISS THERMOREACTORS INC.
180, Arboit Street
L'Assomption
QUÉBEC J5W 4P5



Date	1 juin/Jun 2015
Votre référence - Your File	
Notre référence - Our File	448571
Numéro d'enregistrement - Registration Number	TMA247,387
Date d'enregistrement - Registration Date	27 juin/Jun 1980

Marque de commerce - Trade-mark
SUNKISS

Objet: PROCÉDURES SELON L'ARTICLE 45

Conformément à l'article 45 de la *Loi sur les marques de commerce*, le propriétaire inscrit de la marque de commerce susmentionnée doit fournir une preuve d'emploi dans les **trois mois** de la date du présent avis. La preuve d'emploi doit être sous forme d'affidavit ou de déclaration solennelle et doit démontrer :

- l'emploi de la marque de commerce enregistrée au Canada à un moment quelconque au cours des trois ans précédant la date de cet avis, à l'égard de chacun des produits / services que spécifie l'enregistrement et, dans la négative;
- la date à laquelle la marque de commerce enregistrée a été employée pour la dernière fois et la(les) raison(s) de son défaut d'emploi depuis cette date.

Pour plus d'information concernant la pratique du registraire relativement à la procédure prévue à l'article 45, veuillez consulter l'énoncé de pratique *Pratique régissant la procédure de radiation prévue à l'article 45* disponible sur le site web de l'Office de la propriété intellectuelle du Canada à www.opic.gc.ca.

Re: SECTION 45 PROCEEDINGS

In accordance with s. 45 of the *Trade-marks Act*, the registered owner of the above trade-mark is required to furnish evidence within **three months** from the date of this notice. The evidence must be in the form of an affidavit or a statutory declaration and should demonstrate:

- use of the registered trade-mark in Canada at any time during the three year period immediately preceding the date of this notice with respect to each of the goods/services specified in the registration and, if not;
- the date when the registered trade-mark was last used in Canada and the reason(s) for the absence of use since that date.

For information concerning the Registrar's practice in section 45 proceedings, please consult the practice notice *Practice in Section 45 Proceedings* available on the Canadian Intellectual Property Office's website at www.cipo.ic.gc.ca.



**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

page: 2

Si le propriétaire inscrit ne produit aucune preuve d'emploi en réponse à cet avis, l'enregistrement est passible d'être radié et le registraire rendra une décision finale de radier l'enregistrement de la marque de commerce conformément à l'article 45(3) de la *Loi sur les marques de commerce*.

If the registered owner does not file any evidence in response to this notice, the registration is liable to be expunged and the Registrar will issue a final decision expunging the trade-mark registration in accordance with s. 45(3) of the *Trade-marks Act*.

Registraire des marques de commerce
Registrar of Trade-marks

POUR RENSEIGNEMENTS / FOR INFORMATION

opic.ic.gc.ca / cipo.ic.gc.ca

819-997-7300

cc: MCMILLAN LLP
BROOKFIELD PLACE, SUITE 4400
BAY WELLINGTON TOWER
181 BAY STREET
TORONTO
ONTARIO M5J 2T3

Partie requérante/Requester:

McMillan LLP

Ref: 233737

cc: ROBIC
CENTRE CDP CAPITAL
1001, SQUARE-VICTORIA, BLOC E - 8E
ETAGE
MONTRÉAL
QUÉBEC H2Z 2B7

Ref: 015348-0006 BHS/MMO

APPL'N/DEM. NO 448 571

REGISTRATION/ENREGISTREMENT NO TMA247,387

FILING DATE/DATE DE PRODUCTION:

08 janv/Jan 1980

REGISTRATION DATE/DATE D'ENREGISTREMENT:

27 juin/Jun 1980

RENEWAL DATE/DATE DE RENOUVELLEMENT:

27 juin/Jun 2010

REGISTRANT/PROPRIÉTAIRE ORIGINAL:

CALINTER S.A.
c/o M.Yvon Python
20, rue de Lausanne
1201 Geneve
SWITZERLAND

CURRENT OWNER/PROPRIÉTAIRE COURANT:

SUNKISS THERMOREACTORS INC.
180, Arboit Street
L'Assomption
QUÉBEC
J5W 4P5

REP FOR SERVICE/REP POUR SIGNIFICATION:

ROBIC
CENTRE CDP CAPITAL
1001, SQUARE-VICTORIA, BLOC E - 8E ETAGE
MONTRÉAL
QUÉBEC H2Z 2B7

TRADE-MARK/MARQUE DE COMMERCE:

SUNKISS

GOODS/PRODUITS:

Heating, air-conditioning and refrigerating apparatus.

CLAIMS/REVENDEICATIONS:

Used in SWITZERLAND on goods.

Registered in or for SWITZERLAND on May 13, 1964 under No. 204616 on goods.

FOOTNOTES/NOTES:

CHANGE IN TITLE/CHANGEMENT DU TITRE:

TYPE OF CHANGE/GENRE DE CHANGEMENT: ASSIGNMENT/CESSION
DATE REGISTERED/DATE DE L'ENREGISTREMENT: 19 juil/Jul 1996
DATE OF CHANGE/DATE DE CHANGEMENT: 12 fév/Feb 1996
COMMENTS/COMMENTAIRES: CHANGED/MODIFIER:
FROM/DE: CALINTER S.A. c/o M.Yvon Python
TO/A: A.J.C., A FRENCH COMPANY,

APPL'N/DEM. NO 448 571

REGISTRATION/ENREGISTREMENT NO TMA247,387

CHANGE IN TITLE/CHANGEMENT DU TITRE:

TYPE OF CHANGE/GENRE DE CHANGEMENT: NAME AND ADDRESS/NOM ET ADRESSE

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 09 nov/Nov 2006

DATE OF CHANGE/DATE DE CHANGEMENT: 29 sept/Sep 2006

COMMENTS/COMMENTAIRES: FROM: A.J.C.

TO: SUNKISS

Voir Preuve au dossier/See evidence on File No. 1008533

CHANGE IN TITLE/CHANGEMENT DU TITRE:

TYPE OF CHANGE/GENRE DE CHANGEMENT: ASSIGNMENT/CESSION

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 18 janv/Jan 2010

DATE OF CHANGE/DATE DE CHANGEMENT: 07 oct/Oct 2009

COMMENTS/COMMENTAIRES: FROM: SUNKISS

TO: SUNKISS THERMOREACTORS INC.

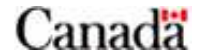
Voir Preuve au dossier/See evidence on File No. 448571

EXHIBIT 8



Canadian Intellectual
Property Office
An Agency of
Industry Canada

Office de la propriété
intellectuelle du Canada
Un organisme
d'Industrie Canada



Canadian Intellectual Property Office

Canadian trade-mark data

[▶ Third-Party Information Liability Disclaimer](#)

[Back to search](#)

The database was last updated on:2015-09-01

APPLICATION NUMBER:

1710294

STATUS:

FILED:

FORMALIZED:

REGISTRATION NUMBER:

not registered

SEARCHED

2015-01-12

2015-01-13

APPLICANT:

FINAM

Chemin des Vignes - Zone d'Activités

Actipole 2B

F-01360 Bressolles

FRANCE

AGENT:

MCMILLAN LLP

BROOKFIELD PLACE, SUITE 4400

BAY WELLINGTON TOWER

181 BAY STREET

TORONTO

ONTARIO M5J 2T3

REPRESENTATIVE FOR SERVICE:

MCMILLAN LLP

BROOKFIELD PLACE, SUITE 4400

BAY WELLINGTON TOWER

181 BAY STREET

TORONTO

ONTARIO M5J 2T3

TRADE-MARK (Word):

SUNKISS THERMOREACTORS

INDEX HEADINGS:

SUNKISS THERMOREACTORS

SUN KISS

THERMO REACTORS

SUNKISS000315

GOODS:

(1) heating apparatus, air conditioning apparatus, cooling apparatus, and drying apparatus; industrial heating apparatus, namely heat generating apparatus, polymerisation and melting apparatus and installations

SERVICES:

(1) reparation and maintenance of heating apparatus, air conditioning apparatus, cooling apparatus, and drying apparatus; reparation and maintenance of industrial heating apparatus, namely heat generating apparatus, polymerisation and melting apparatus and installations

CLAIMS:

Proposed Use in CANADA.

ASSOCIATED MARKS:

1,710,292

Action Information			
<u>ACTION</u>	DATE	BF	COMMENTS
Filed	2015-01-12		
Created	2015-01-12		
Formalized	2015-01-13		
Search Recorded	2015-07-31		
Examiner's First Report	2015-07-31	2016-01-31	

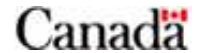
[Back to search](#)
[Back](#)

Last updated: 2015-09-01



Canadian Intellectual
Property Office
An Agency of
Industry Canada

Office de la propriété
intellectuelle du Canada
Un organisme
d'Industrie Canada



Canadian Intellectual Property Office

Canadian trade-mark data

[▶ Third-Party Information Liability Disclaimer](#)

[Back to search](#)

The database was last updated on:2015-09-01

APPLICATION NUMBER:

1710292

REGISTRATION NUMBER:

not registered

STATUS:

SEARCHED

FILED:

2015-01-12

FORMALIZED:

2015-01-13

APPLICANT:

FINAM
Chemin des Vignes - Zone d'Activités
Actipole 2B
F-01360 Bressolles
FRANCE

AGENT:

MCMILLAN LLP
BROOKFIELD PLACE, SUITE 4400
BAY WELLINGTON TOWER
181 BAY STREET
TORONTO
ONTARIO M5J 2T3

REPRESENTATIVE FOR SERVICE:

MCMILLAN LLP
BROOKFIELD PLACE, SUITE 4400
BAY WELLINGTON TOWER
181 BAY STREET
TORONTO
ONTARIO M5J 2T3

TRADE-MARK (Word):

SUNKISS

INDEX HEADINGS:

SUNKISS

SUN KISS

GOODS:

- (1) air conditioning apparatus, cooling apparatus, and drying apparatus; industrial heating apparatus, namely heat generating apparatus, polymerisation and melting apparatus and installations
- (2) all heating apparatus, heating elements and unit heaters

SERVICES:

- (1) reparation and maintenance of heating apparatus, air conditioning apparatus, cooling apparatus, and drying apparatus; reparation and maintenance of industrial heating apparatus, namely heat generating apparatus, polymerisation and melting apparatus and installations

CLAIMS:

Used in OHIM (EU) on goods (1).

Used in FRANCE on goods (2).

Registered in or for OHIM (EU) on February 19, 2002 under No. 1997220 on goods (1).

Registered in or for FRANCE on September 23, 1991 under No. 1695957 on goods (2).

Proposed Use in CANADA.

ASSOCIATED MARKS:

1,710,294

Action Information			
<u>ACTION</u>	DATE	BF	COMMENTS
Filed	2015-01-12		
Created	2015-01-12		
Formalized	2015-01-13		
Search Recorded	2015-07-31		
Examiner's First Report	2015-07-31	2016-01-31	

[Back to search](#)
[Back](#)

Last updated: 2015-09-01

EXHIBIT 9

6/2/2015

American Industrial Ovens - Ayotte Techno-Gaz

NEW WEBSITE UP THIS MORNING

WWW.SUNSPOTPRODUCT.COM

CONTACT

AMERICAN INDUSTRIAL OVENS

WE PRODUCE AND DISTRIBUTE INDUSTRIAL PROCESSES AND EQUIPMENTS
FOR INDUSTRIAL DRYING FOR METAL, WOOD AND PLASTIC AND MORE.

AYOTTE
TECHNO-GAZ

SUNKISS

SUNSpot



WE ARE YOUR EXCLUSIVE DEALER AND MANUFACTURER OF SUNKISS THERMOREACTORS

[BROWSE PORTFOLIO GALLERY](#)

Lea

INDUSTRIAL OVEN
CONVECTION OR INFRARED

FLEXIBLE AND SMALL DRYING SYSTEM
HT-100 & HT-200

<http://www.americanovens.com/en>

SUNKISS000001

1/3

FINAM000001

6/2/2015

American Industrial Ovens - Ayotte Techno-Gaz

INDUSTRIAL WASHER

ULTRA-PORTABLE DRYING SYSTEM
SUN-SPOT

TRY OUR TECHNOLOGY ON YOUR OWN PRODUCT AT OUR TEST FACILITY



WHO WE WORK FOR



AUTO PARTS

FRIGIDAIRE

Mack

Richelieu
Hardware

AkzoNobel

faurecia

USA • CANADA • MEXICO • AFRICA

6/2/2015

American Industrial Ovens - Ayotte Techno-Gaz



TO REACH US

450-756-0219 **1 877-499-9950**

OFFICE, LAB TEST AND SHOW ROOM

2223 ROUTE 131 NORD, NOTRE-DAME-DE-LOURDES (QUEBEC), CANADA J0K 1K0

<http://www.americanovens.com/en>

SUNKISS000003

3/3

FINAM000003



SUNKISS
THERMOREACTORS INC.



SUNKISS
THERMOREACTORS INC.

HT100 - HT200



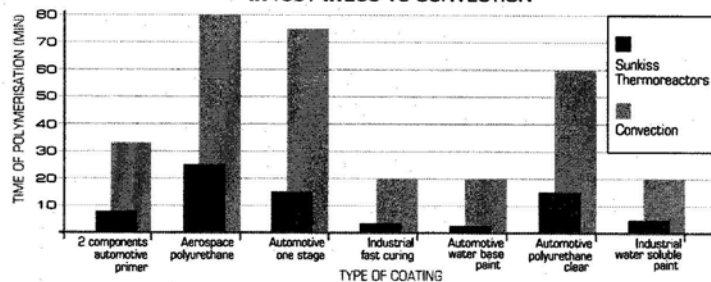
EFFICIENCY

Sunkiss-Thermoreactors are flameless catalytic infrared heaters. This unit is simple to use, cost effective and offers the option to force the drying or curing of any type of organic coatings. Its particularly efficient over water base type of coating, since it force the moisture out of the film within 2 to 3 minutes.

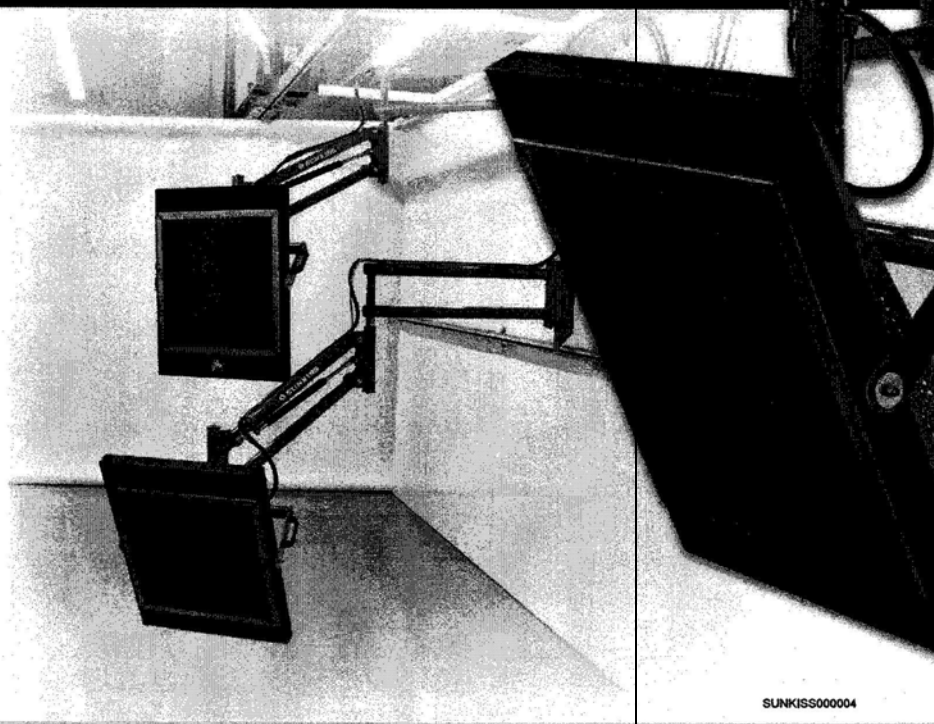
NO BUFFING REQUIRED

With such a quick curing process, there's no need to use fans or any air movement to make the paint dry faster. No dust or dirt is blown onto the paint, so no buffing is required.

**SUNKISS THERMOREACTORS CURING TIME
HT100 / HT200 VS CONVECTION**



PRINTED IN CANADA



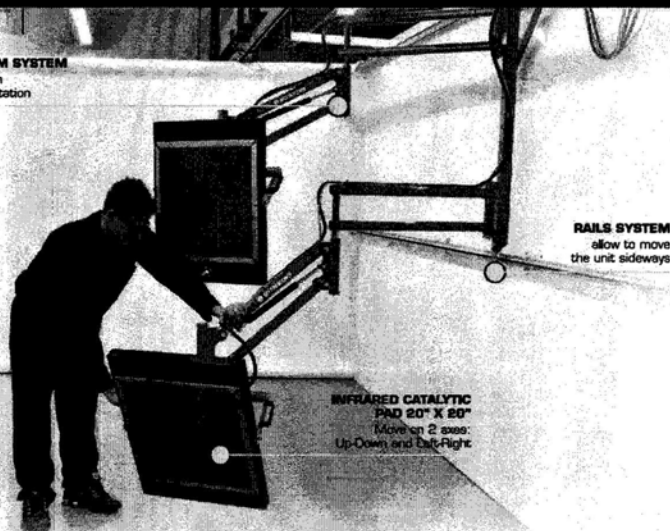
SUNKISS000004



SUNKISS
THERMOREACTORS INC.

HT100 - HT200

FLEXIBLE ARM SYSTEM
60 inches span
180° angle rotation



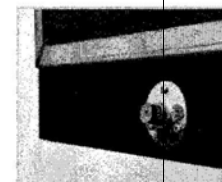
RAILS SYSTEM
allow to move
the unit sideways

**INFLARED CATALYTIC
PAD 20" X 20"**
Move on 2 axes:
Up-Down and Left-Right



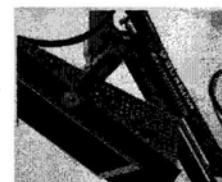
CONTROL PANEL

Easy to use,
controlled by the pyrometer
- Ramp time
- Curing temperature
- Curing time

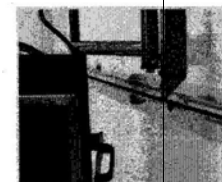


PYROMETER

Read and control the
surface temperature to
avoid overheating with an
accuracy of $\pm 3^\circ\text{F}$



**FLEXIBLE
THERMOREACTORS**



RAIL SYSTEM

Allow to move the HT-100
or HT-200 sideways

TECHNOLOGY OF CATALYTIC COMBUSTION

The flameless combustion produced by the Sunkiss-Thermoreactors emits medium waves infrared which will generate tremendous heat within the film through molecular excitation. This action drives the solvent and the water outward.

FEATURES

- Flameless, catalytic combustion, 100% safe to use
- Infrared medium waves
- CSA approved
- Curing foot print: 4 X 4 feet by Thermoreactors; HT-200 have a 4 X 8 feet foot print
- 6 to 8 times faster than convection
- Very fast curing, low fuel consumption
- Energy saving: 50-60% compare to convection
- Shorter drying time: Increase production capacity
- Maintenance free, solid and robust construction, life span up to 20 years

**WILL WORK OF ALL TYPES
OF ORGANICS COATINGS**

- Urethane
- Epoxy's
- Water base
- Polyester
- Alkyd
- Melamine
- Latex
- Lacquer
- Acrylic's
- Glue
- Sealant
- Etc.

APPLICATIONS

- Automobile
- Aerospace
- Woods
- Fiber glass
- Composite material: Fiberglass
- Windows and doors
- Varnish
- Industrial paint and woods
- Automobiles



Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System
Burner
Paint Line-Washer

Ayotte
TECHNO-GAZ Inc.
PROCÉDÉ INDUSTRIEL

Industrial Process

americanovens.com

SUN-Spot
HT-100-200

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950

Fax : (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.

Facturé à:

Bill to:

Lieu des travaux:

Ship to:

Richelieu America Ltd
7021 Sterling Ponds Crescent
Sterling Heights, Michigan 48312
USA

Marvin Wittmer
10811 E. 875 N.
Odon
Indiana 47562 USA

P.O. Number

DE COMMANDE

02056666

AUTORISATION

Invoice Date

DATE DE LA FACTURE

05-01-15

Invoice #

DE LA FACTURE

504

Description	QT. SHIP	PRICE	Amount
	Quantité expédiée	Prix	Montant
6 SHT200 9625HT200 Dry Syst. Wall / Mount (2 Thermoreactor Sunkiss) 6926.50	6	6 926.50	41 559.00
Propane Gas			
Good Day			

THANK YOU

MERCI

Veuillez émettre votre chèque à l'ordre de: Ayotte Techno-Gaz inc.

Please make a payment to : Ayotte Techno-Gaz inc.

T.P.S. #132215401

T.V.Q. #1012264255

Montant total

41 559.00

FINAM000006



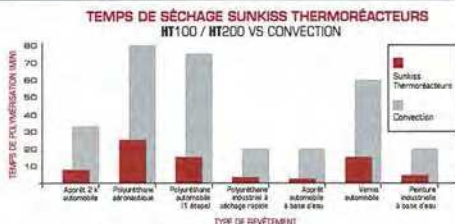
FINAM000007



THERMORÉACTEURS HT100 - HT200



SUNKISS[®]
THERMORÉACTEURS INC.



MINIMISE LE POLISSAGE

Leur grande efficacité permet d'atteindre un niveau de séchage sans poussière exceptionnel. Leur rapidité réduit les besoins de polissage des revêtements appliqués.

CANADA
Tél. : 1 800 361-6000
Téléc. : 1 800 363-0193

ALBERTA
Calgary
Edmonton

COLOMBIE-BRITANNIQUE

Kelowna
Vancouver

MANITOBA

Winnipeg

NOUVEAU-BRUNSWICK

Moncton

NOUVELLE-ÉCOSSE

Halifax

ONTARIO

Barrie

Kitchener

Mississauga

Ottawa

Thunder Bay

Toronto

QUÉBEC

Drummondville

Laval

Longueuil

Montréal

Québec

SASKATCHEWAN

Regina

Saskatoon

TERRE-NEUVE

St. John's

ÉTATS-UNIS

Tél. : 1 800 619-5446

Téléc. : 1 800 676-7454

CAROLINE DU NORD

Charlotte

High Point

Raleigh

CAROLINE DU SUD

Greenville

CONNECTICUT

Hartford

FLORIDE

Dania Beach

Hialeah

Pompano Beach

Riviera Beach

GEORGIE

Atlanta

ILLINOIS

Chicago

KENTUCKY

Louisville

MASSACHUSETTS

Boston

MICHIGAN

Detroit

NEW JERSEY

Avenel

Lincoln Park

NEW YORK

New York

Syracuse

OHIO

Cincinnati

Columbus



9625HT100 & # 9625HT200

EFFICACITÉ ET PERFORMANCES

Les thermoreacteurs Sunkiss produisent une combustion catalytique sans fumée, et ce, par un processus d'oxydation à basse température. Ils sont particulièrement efficaces pour le séchage des revêtements à base d'eau ou à base de solvant. Ils permettent de réduire les coûts de maintenance et de polissage des revêtements appliqués. Ils sont également très efficaces pour le séchage des revêtements à base de solvant. Ils permettent de réduire les coûts de maintenance et de polissage des revêtements appliqués. Ils sont également très efficaces pour le séchage des revêtements à base de solvant.

WWW.RICHELIEU.COM

HT100 - # 9625HT100

**THERMORÉACTEURS
HT100 - HT200**

HT100 : # 9625HT100
HT200 : # 9625HT200
Rail : # 9625HTR1



THERMOREACTEURS
HT100 - HT200

**MÉCANISME DE SOUTIEN
ARTICULÉ FLEXIBLE**
Portée de 600 pouces
Angle de rotation de 180°



**DISPOSITIF MONTÉ
SUR RAILS**
Permettant un
mouvement latéral

**COUSSIN CATALYTIQUE
DE 20" X 20"**
Rotation de 2 axes
Gauche / droite, haut / bas



PANNEAU DE CONTRÔLE
Facile d'utilisation, contrôle
par un pyromètre d'une
précision de $\pm 1^\circ$
- Temps d'acquisition de 1"
- T° de séchage
ou de polymérisation
- Temps de séchage ou
de polymérisation



**THERMOREACTEURS
D'UNE GRANDE FLEXIBILITÉ**



PYROMÈTRE
Le et contrôle la température
du substrat, d'une précision
de $\pm 1^\circ$ évitant la
surchauffe des surfaces



DISPOSITIF DE RAILS
Permettant un
mouvement latéral

TECHNOLOGIE DE LA COMBUSTION CATALYTIQUE

Le principe de la combustion sans flamme du coussin catalytique du HT-100 et du HT-200 est d'émettre un rayonnement infrarouge d'ondes moyennes qui agit au niveau moléculaire sur différents types de revêtements. Ce rayonnement infrarouge est produit par la réaction physicochimique du gaz et de l'oxygène au contact des fibres imprégnées du composé de platine.

CARACTÉRISTIQUES

- Combustion catalytique sans flamme 100% sécuritaire
- Longueur d'onde infrarouge moyenne
- Approuvé CSA
- Empreinte de rayonnement 4' X 4'
- Unité HT-200 permet un rayonnement de 4' X 8'

- 5 à 8 fois plus rapide que la convection
- Faible consommation de gaz
- Économie d'énergie de 50-60% comparée à la convection
- Temps de séchage accéléré qui permet une augmentation significative de la production
- Construction solide et robuste qui a une espérance de vie de 20 ans sans maintenance

EFFICACE SUR TOUT TYPE DE REVÊTEMENTS

- Uréthane
- Époxy
- Base d'eau
- Polyester
- Alkyd
- Vitamine, latex et laque
- Acrylique
- Colles
- Scellants
- Etc.



APPLICATIONS

- Automobile
- Aéronautique
- Les bois
- Les murs de béton
- Les matériaux composites
- Les portes et fenêtres
- La plâtrerie
- L'acier industriel
- L'acier usiné
- 3D impression plus

EXHIBIT 10

REDACTED

***(DOCUMENT FILED UNDER SEAL
CONTAINS CONFIDENTIAL INFORMATION)***

EXHIBIT 11

REDACTED

***(DOCUMENT FILED UNDER SEAL
CONTAINS CONFIDENTIAL INFORMATION)***

EXHIBIT 12

REDACTED

***(DOCUMENT FILED UNDER SEAL
CONTAINS CONFIDENTIAL INFORMATION)***

EXHIBIT 13

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,)	
)	
Petitioner,)	
	)	Cancellation No. 92/060,849
v.)	
	)	Reg. No. 1,200,333
Sunkiss Thermoreactors, Inc.,)	
	)	Mark: SUNKISS
Registrant.)	
_____)	

**REGISTRANT’S OBJECTIONS AND RESPONSES TO
PETITIONER’S FIRST SET OF REQUESTS FOR ADMISSION**

The Registrant, Sunkiss Thermoreactors, Inc. (“Registrant”), by and through counsel, responds to the Petitioner’s First Set of Requests for Admissions as follows.

These responses are made solely for purposes of this action. Each response is made subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and all other objections and grounds which would require the exclusion of any statement contained herein, all of which objections and grounds are expressly reserved and may be interposed at the time of trial or during any other proceedings in this action.

The Registrant’s responses are based upon information currently available to it. The Registrant’s investigation and discovery in this action are ongoing, and the Registrant reserves the right to supplement these answers in the event that additional information is obtained through such investigation or discovery. The Registrant’s responses are made without prejudice to its rights to introduce any and all documents and other evidence of any kind in the proceedings in this action.

Unless otherwise explicitly stated to the contrary, nothing contained in these responses is intended to be or should be construed to be an admission by the Registrant of the relevance or admissibility at trial or on any motion of any information contained in these responses.

GENERAL OBJECTIONS AND RESPONSES

The Registrant's responses are made subject to, and without waiver of, the following general objections as well as any specific objection(s) stated for each request.

The Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories, served contemporaneously herewith, are incorporated by reference and made a part hereof, as if fully stated herein.

SPECIFIC RESPONSES

The Registrant responds to the Petitioner's requests for admission as follows, subject to the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories.

1. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are genuine pursuant to the Federal Rules of Evidence.

Response to Request No. 1

The Registrant objects to Request No. 1 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant also objects to this request as vague and ambiguous with respect to the term "genuine." The Registrant further objects to this request to the extent that it encompasses any documents not yet reviewed or

produced by the Registrant. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that to the best of its knowledge, and unless otherwise noted or stated, the documents produced in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are admissible and capable of authentication under the Federal Rules of Evidence, in particular Rules 901 through 903 and 1001 through 1007.

2. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are part of the business records of Registrant kept in the normal course of Registrant's business.

Response to Request No. 2

The Registrant objects to Request No. 2 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant further objects to this request as vague and ambiguous with respect to the term "normal course of business." The Registrant responds to the request applying the definition of "records of a regularly conducted activity" from FED. R. EVID. 803(6) to the term "normal course of business." The Registrant further objects to this request to the extent that it encompasses any documents not yet reviewed or produced by the Registrant. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS IN PART and DENIES IN PART. Specifically, the Registrant ADMITS that to the best of its knowledge, that many of the documents produced in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are records of a regularly conducted activity, pursuant to FED. R. EVID. 803(6). However, not all of the produced documents are records of a regularly conducted activity, for example some produced documents may be public records.

3. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Registrant on the grounds of relevance.

Response to Request No. 3

The Registrant objects to Request No. 3 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant objects to this request to the extent that it is duplicative of at least Request Nos. 1 and 2. The Registrant further objects to this request to the extent that it encompasses any documents not yet reviewed or produced by the Registrant. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that to the best of its knowledge, and unless otherwise noted or stated, the documents produced in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are admissible and capable of authentication under the Federal Rules of Evidence, in particular Rules 901-903, and 1001-1007.

4. Registrant has entered into agreement(s) with one or more third parties granting Registrant the right to use the SUNKISS mark.

Response to Request No. 4

The Registrant objects to Request No. 4 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The Registrant will respond to this request applying the following definition, "the Registrant's Mark," to the term "SUNKISS mark." The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words "agreement" and/or "right to use." For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it entered into an agreement to use the Registrant's Mark in the United States with Sunkiss Societe par Action Simplifiee; and then entered into an assignment agreement in 2009 with Sunkiss Societe par Action Simplifiee transferring ownership of the Registrant's Mark to the Registrant.

5. Registrant has entered into agreement(s) with one or more third parties granting Registrant the right to use the SUNKISS mark and such agreement(s) are still valid and in effect.

Response to Request No. 5

The Registrant objects to Request No. 5 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The Registrant will respond to this request applying the following definition, "the Registrant's Mark," to the term "SUNKISS mark." The Registrant further objects to this request to the extent that it is duplicative of Request No. 4. The Registrant further objects to this request to the extent that it seeks information and documents that are not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence, including information related to any agreements or parts of agreements that are not strictly related to the ownership and/or use of trademarks. The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words "agreement" and/or "right to use." For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it entered into an agreement in 2008 to use the Registrant's Mark in the United States with Sunkiss Societe par Action Simplifiee and then entered into an assignment agreement in 2009 with Sunkiss Societe par Action Simplifiee transferring ownership of the Registrant's Mark to the Registrant. The Registrant further ADMITS that the 2009 assignment agreement remains valid and in effect and that the 2009 assignment agreement

had the effect of nullifying and/or making unnecessary any rights to use the Registrant's Mark from the 2008 agreement.

6. Registrant has entered into licensing agreement(s) granting third-parties the right to use the SUNKISS mark.

Response to Request No. 6

The Registrant objects to Request No. 6 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The Registrant will respond to this request applying the following definition, "the Registrant's Mark," to the term "SUNKISS mark." The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words "licensing agreement" and/or "right to use." For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it has entered into distribution agreement(s), which include granting these third-parties the right to use the Registrant's Mark in the United States.

7. Registrant has entered into licensing agreement(s) with Ayotte Techno-Gaz Inc. regarding use of the SUNKISS mark in the United States.

Response to Request No. 7

The Registrant objects to Request No. 7 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The Registrant will respond to this request applying the following definition, "the Registrant's Mark," to the term "SUNKISS mark." The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words "licensing agreement" and/or "regarding use." For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it has entered into a distribution agreement with Ayotte Techno-Gaz Inc., which includes granting Ayotte Techno-Gaz Inc. the right to use the Registrant's Mark in the United States.

8. Registrant has entered into licensing agreement(s) with American Industrial Ovens regarding use of the SUNKISS mark in the United States.

Response to Request No. 8

The Registrant objects to Request No. 8 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The

Registrant will respond to this request applying the following definition, “the Registrant’s Mark,” to the term “SUNKISS mark.” The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “licensing agreement” and/or “regarding use.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant and American Industrial Ovens share a common owner, who is also the Director of both companies, Mr. Daniel Ayotte. While there are no written agreements between the Registrant and American Industrial Ovens, there is an oral understanding and implied license between the companies allowing American Industrial Ovens to use the Registrant’s Mark in the United States. Therefore, the Registrant ADMITS this request.

9. All of Registrant’s licensing agreements which grant a third-party the right to use the SUNKISS mark reserve Registrant’s right to monitor the licensee’s use of the SUNKISS mark.

Response to Request No. 9

The Registrant objects to Request No. 9 on the grounds set forth in the General Objections stated above and in the Registrant’s General Objections and Responses to Petitioner’s First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term “SUNKISS mark.” The Registrant will respond to this request applying the following definition, “the Registrant’s Mark,” to the term “SUNKISS mark.” The Registrant further objects to this request to the extent

it calls for a legal conclusion. The Registrant further objects to this request as vague and ambiguous with respect to the term “right to monitor.” The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “licensing agreements,” “right to use,” “right to monitor,” and/or “licensee’s use.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that its agreement with Ayotte Techno-Gaz Inc. and American Industrial Ovens include provisions permitting the Registrant to verify compliance with performance and quality standards and that the Registrant may inspect premises, in addition to other provisions to assure the quality of the products offered by Ayotte Techno-Gaz Inc. and American Industrial Ovens under the Registrant’s Mark.

10. All of Registrant’s licensing agreements which grant a third-party the right to use the SUNKISS mark reserve Registrant’s right to inspect the licensee’s use of the SUNKISS mark.

Response to Request No. 10

The Registrant objects to Request No. 10 on the grounds set forth in the General Objections stated above and in the Registrant’s General Objections and Responses to Petitioner’s First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term “SUNKISS mark.” The Registrant will respond to this request applying the following definition, “the Registrant’s

Mark,” to the term “SUNKISS mark.” The Registrant also objects to this request to the extent it calls for a legal conclusion. The Registrant further objects to this request to the extent that it is duplicative of at least Request No. 9. The Registrant further objects to this request as vague and ambiguous with respect to the term “right to inspect.” The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “licensing agreements,” “right to use,” “right to inspect,” and/or “licensee’s use.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that its agreements with Ayotte Techno-Gaz Inc. and American Industrial Ovens include provisions permitting the Registrant to verify compliance with performance and quality standards and that the Registrant may inspect premises, in addition to other provisions to assure the quality of the products offered by Ayotte Techno-Gaz Inc. and American Industrial Ovens under the Registrant’s Mark.

11. Registrant has investigated its licensees’ use of the SUNKISS mark.

Response to Request No. 11

The Registrant objects to Request No. 11 on the grounds set forth in the General Objections stated above and in the Registrant’s General Objections and Responses to Petitioner’s First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term “SUNKISS mark.” The Registrant will respond to this request applying the following definition, “the Registrant’s

Mark,” to the term “SUNKISS mark.” The Registrant also objects to this request to the extent it calls for a legal conclusion. The Registrant further objects to this request as vague and ambiguous with respect to the term “investigated.” The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “investigated” and/or “licensee’s use.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it is aware of and has first-hand knowledge as to what products are offered under the Registrant’s Mark, how those products are made, the quality of those products, the pricing of those products, and the majority if not all of the details associated with the products offered under the Registrant’s Mark in the United States by Ayotte Techno-Gaz Inc. and American Industrial Ovens. The Registrant further admits that its awareness and knowledge are obtained, achieved, and otherwise realized on a consistent and regular basis.

12. Registrant has monitored its licensees’ use of the SUNKISS mark.

Response to Request No. 12

The Registrant objects to Request No. 12 on the grounds set forth in the General Objections stated above and in the Registrant’s General Objections and Responses to Petitioner’s First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term “SUNKISS mark.” The Registrant will respond to this request applying the following definition, “the Registrant’s Mark,” to the term “SUNKISS mark.” The Registrant also objects to this request to the extent it

calls for a legal conclusion. The Registrant further objects to this request as vague and ambiguous with respect to the term “monitored.” The Registrant further objects to this request to the extent it is duplicative of at least Request No. 11. The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “monitored” and/or “licensee’s use.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it is aware of and has first-hand knowledge as to what products are offered under the Registrant’s Mark, how those products are made, the quality of those products, the pricing of those products, and the majority if not all of the details associated with the products offered under the Registrant’s Mark in the United States by Ayotte Techno-Gaz Inc. and American Industrial Ovens. The Registrant further admits that its awareness and knowledge are obtained, achieved, and otherwise realized on a consistent and regular basis.

13. Registrant has a standard procedure for monitoring its licensees’ use(s) of the SUNKISS mark.

Response to Request No. 13

The Registrant objects to Request No. 13 on the grounds set forth in the General Objections stated above and in the Registrant’s General Objections and Responses to Petitioner’s First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term “SUNKISS mark.” The Registrant will respond to this request applying the following definition, “the Registrant’s

Mark,” to the term “SUNKISS mark.” The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant also objects to this request as vague and ambiguous with respect to the term “standard procedure for monitoring.” The Registrant further objects to this request to the extent that it is duplicative of at least Request Nos. 11 and 12. The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “standard procedure,” “monitoring” and/or “licensees’ use.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it is aware of and has first-hand knowledge as to what products are offered under the Registrant’s Mark, how those products are made, the quality of those products, the pricing of those products, and the majority if not all of the details associated with the products offered under the Registrant’s Mark in the United States by Ayotte Techno-Gaz Inc. and American Industrial Ovens. The Registrant further admits that its awareness and knowledge are obtained, achieved, and otherwise realized on a consistent and regular basis. The Registrant further ADMITS that it has a “checklist,” that is first used when the Registrant’s Product is assembled that employees refer to, in order to ensure that the Product respects the quality control measures imposed by the Registrant. The Registrant further ADMITS that as a final check of quality control there is verification to confirm that the Product is emitting heat in a uniform fashion with the goal of ensuring that there are no cold spots.

14. Registrant monitors its licensees' use of the SUNKISS mark to ensure compliance with Registrant's quality control standards.

Response to Request No. 14

The Registrant objects to Request No. 14 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The Registrant will respond to this request applying the following definition, "the Registrant's Mark," to the term "SUNKISS mark." The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant also objects to this request as vague and ambiguous with respect to the terms "monitors" and "quality control standards." The Registrant further objects to this request to the extent that it is duplicative of at least Request Nos. 11, 12, and 13. The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words "monitors," "licensees' use," "compliance," and/or "quality control standards." For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS that it is aware of and has first-hand knowledge as to what products are offered under the Registrant's Mark, how those products are made, the quality of those products, the pricing of those products, and the majority if not all of the details associated with the products offered under the Registrant's Mark in the United States by Ayotte Techno-Gaz Inc. and American Industrial Ovens. The Registrant further admits that its awareness and

knowledge are obtained, achieved, and otherwise realized on a consistent and regular basis. The Registrant further ADMITS that it has a “checklist,” that is first used when the Registrant’s Product is assembled that employees refer to, in order to ensure that the Product respects the quality control measures imposed by the Registrant. The Registrant further ADMITS that as a final check of quality control there is verification to confirm that the Product is emitting heat in a uniform fashion with the goal of ensuring that there are no cold spots.

15. Registrant has hired a third-party to monitor its licensees’ use of the SUNKISS mark to ensure that the licensees’ use complies with Registrant’s quality control standards.

Response to Request No. 15

The Registrant objects to Request No. 15 on the grounds set forth in the General Objections stated above and in the Registrant’s General Objections and Responses to Petitioner’s First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term “SUNKISS mark.” The Registrant will respond to this request applying the following definition, “the Registrant’s Mark,” to the term “SUNKISS mark.” The Registrant also objects to this request to the extent it calls for a legal conclusion. The Registrant further objects to this request as vague and ambiguous with respect to the terms “monitor” and “quality control standards.” The Registrant further objects to this request to the extent that it is duplicative of at least Request Nos. 11, 12, 13, and 14. The Registrant further objects to this request to the extent that it asserts or implies that a third party is required “to monitor [the Registrant’s] licensees’ use of” the Registrant’s Mark. The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in

Mark,” to the term “SUNKISS mark.” The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant also objects to this request as vague and ambiguous with respect to the terms “does not conform” and “quality control standards.” The Registrant further objects to this request to the extent that it assumes facts not in evidence or asserts or implies that the Registrant has documented “quality control standards” applicable solely to licensees. The Registrant further objects to this request to the extent that it asserts, implies, or otherwise suggests the Registrant is aware of any licensees granted the right to use the Registrant’s Mark in the United States other than Ayotte Techno-Gaz Inc. and American Industrial Ovens. The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “licensee’s use,” “conform,” and/or “quality control standards.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant DENIES this request.

23. Registrant has taken steps to prevent a licensee’s use of the SUNKISS mark which does not conform to Registrant’s quality control standards.

Response to Request No. 23

The Registrant objects to Request No. 23 on the grounds set forth in the General Objections stated above and in the Registrant’s General Objections and Responses to Petitioner’s First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term “SUNKISS mark.” The

Registrant will respond to this request applying the following definition, “the Registrant’s Mark,” to the term “SUNKISS mark.” The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant also objects to this request as vague and ambiguous with respect to the terms “taken steps,” “does not conform,” and “quality control standards.” The Registrant further objects to this request to the extent that it assumes facts not in evidence or asserts or implies that the Registrant is aware of a licensee using the Registrant’s Mark in a manner that “does not conform to Registrant’s quality control standards,” or that the Registrant has documented “quality control standards” applicable solely to licensees. The Registrant further objects to this request to the extent that it asserts, implies, or otherwise suggests the Registrant is aware of any licensees granted the right to use the Registrant’s Mark in the United States other than Ayotte Techno-Gaz Inc. and American Industrial Ovens. The Registrant objects to this request to the extent it seeks a legal conclusion or seeks to apply legal definitions, precedent or other interpretation, that are not common and customary in the United States, in particular to the words “licensee’s use,” “conform,” and/or “quality control standards.” For this response, the Registrant will apply the usual meaning, definitions, precedent and/or other interpretation found in the United States. Without waiving those objections, the Registrant responds as follows:

The Registrant ADMITS IN PART and DENIES IN PART. The Registrant is not aware of any uses of the Registrant’s Mark by Ayotte Techno-Gaz Inc. or American Industrial Ovens that would violate any “quality control standards,” and therefore DENIES this request to the extent it concerns addressing violations of “quality control standards” that have occurred. However, the Registrant supplies Ayotte Techno-Gaz Inc. and American Industrial Ovens with the Goods offered under the Registrant’s Mark, as well as specification, instructions, suggested

retail price lists, marketing, promotion and advertising materials for the Registrant's Mark; and the Registrant fulfills warranty obligations for the Goods offered under the Registrant's Mark. Therefore, the Registrant ADMITS this request to the extent it concerns preventing a lack of "quality" beneath those required by the Registrant.

24. Registrant has terminated a license agreement because the licensee did not meet Registrant's quality control standards for the SUNKISS mark.

Response to Request No. 24

The Registrant objects to Request No. 24 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The Registrant will respond to this request applying the following definition, "the Registrant's Mark," to the term "SUNKISS mark." The Registrant further objects to this request to the extent it calls for a legal conclusion. The Registrant further objects to this request as vague and ambiguous with respect to the terms "did not meet" and "quality control standards." The Registrant also objects to this request to the extent that it assumes facts not in evidence or asserts or implies that the Registrant is aware of a licensee using the Registrant's Mark in a manner that "did not meet Registrant's quality control standards," or that the Registrant has documented "quality control standards" applicable solely to licensees. The Registrant further objects to this request to the extent that it asserts, implies, or otherwise suggests the Registrant is aware of any licensees granted the right to use the Registrant's Mark in the United States other than Ayotte Techno-Gaz Inc. and American Industrial Ovens. The Registrant objects to this request to the

Response to Request No. 33


The Registrant objects to Request No. 33 on the grounds set forth in the General Objections stated above and in the Registrant's General Objections and Responses to Petitioner's First Set of Interrogatories and incorporates those objections here. The Registrant further objects to this request as vague and ambiguous with respect to the term "SUNKISS mark." The Registrant will respond to this request applying the following definition, "the Registrant's Mark," to the term "SUNKISS mark." The Registrant further objects to this request to the extent that it calls for a legal conclusion. The Registrant also objects to this request to the extent that it encompasses any documents not yet reviewed or produced by the Registrant. The Registrant further objects to this request to the extent it asserts, implies or suggests that the Registrant is not permitted and/or obligated to produce additional evidence discovered as part of the Registrant's ongoing obligations under the Federal Rules of Civil Procedure and/or TBMP. The Registrant further objects to this request to the extent that it assumes, implies, or otherwise suggests that the Registrant has possession, custody, or control of evidence that pre-dates Sunkiss Thermoreactors, Inc.'s acquisition of the ownership of the Registration. The Registrant further objects to this request to the extent that it seeks information and documents that are not relevant to the claims and defenses asserted in this proceeding and/or seeks information not reasonably likely to lead to the discovery of admissible evidence, including information related to refrigerators. Without waiving those objections, the Registrant responds as follows:

Sunkiss Thermoreactors, Inc., acquired ownership of the Registration in 2009. The prior owner of the Registration, Calinter S.A., deleted "refrigerates" from the identification of goods for the Registration in 1987 with the submission of its Combined Declaration Under

Sections 8 & 15. The Registrant responds that it is unable to admit or deny Request No. 32 based upon information available to it, after reasonable investigation, and the same is therefore DENIED.

Respectfully submitted,

August 10, 2015
Date



Rebecca J. Stempien Coyle
Paul Grandinetti
LEVY & GRANDINETTI
P.O. Box 18385
Washington, D.C. 20036-8385
Telephone (202) 429-4560
Facsimile (202) 429-4564

Attorneys for Registrant

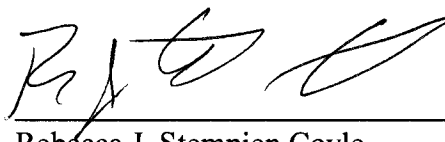
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S OBJECTIONS AND
RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION was served
this date by first class mail, postage prepaid, and e-mail on the Petitioner's attorneys as follows:

Ms. Kristen A. Mogavero
Ms. Jess M. Collen
COLLEN IP INTELLECTUAL PROPERTY LAW PC
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
kmogavero@collenip.com

August 10, 2015

Date



Rebecca J. Stempien Coyle

EXHIBIT 14

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849

Reg. No.: 1,200,333

PETITIONER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM (hereafter, "Petitioner") hereby requests that Registrant Sunkiss Thermoreactors, Inc. ("Registrant") respond under oath or by affirmation to the following Interrogatories within thirty (30) days after service of these requests. These Interrogatories shall be deemed continuing and Registrant is requested to serve upon Petitioner, in the form of supplementary Answers, any additional information requested herein that may be known to Registrant after the date of its Answers to these Interrogatories.

INSTRUCTIONS AND DEFINITIONS

The following definitions and instructions are applicable to Petitioner's First Set of Interrogatories, Petitioner's First Request for Production of Documents and Petitioner's First Request for Admissions:

A. "Petitioner" means the named Petitioner in this action, FINAM, including its divisions, departments, subsidiaries, parents, partners, joint venture partners, officers, directors, owners, agents, employees, accountants, attorneys, any predecessor or successor in interest thereof, and all other persons acting on behalf of or for the benefit of FINAM.

B. "Registrant" or "you" shall mean the named Registrant, Sunkiss Thermoreactors, Inc., including all partners, joint venture partners, agents, employees, accountants, attorneys, any predecessor or successor in interest thereof, and all other persons acting on behalf of or for the benefit of Sunkiss Thermoreactors, Inc.

C. The term "Registration" means United States Trademark Registration No. 1,200,333.

D. The term "Registrant's Mark" means the trademark identified in United States Trademark Registration No. 1,200,333.

E. The terms "Goods" and "Products" means the items marketed and distributed or intended to be marketed and distributed by Registrant and/or the services provided.

F. The terms "data," "document" and "documents" means any writing of any kind, in any form or format, including all originals, copies, non-identical copies of all correspondence, papers, books, messages, publications, recordings, literature, letters, email communications, photographs, price lists, brochures, memoranda, notes, reports, drawings, diaries, graphic, aural, mechanical or electronic records, or any information that is stored electronically or otherwise and is capable of being retrieved, and any other writings whether in final or draft form and whether or not such draft was actually used or completed, or any "document" as otherwise described in Federal Rule of Civil Procedure 34 which is in your actual or constructive possession, custody or control.

G. "Person" means any individual, firm, corporation, partnership, proprietorship, cooperative, association, joint venture, organization, governmental body, group of natural persons, or any other entity.

H. The term "identify" or "specify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Registrant, whether or not in possession of Registrant, and whether or not alleged to be privileged, including the following information:

- 1) The present depository or depositories and the name and address of the person or persons having custody of any item to be identified unless the item is a patent, public document or person;
- 2) If the item to be identified is a person, his or her full name, address, job title, and present employers;
- 3) If the item to be identified is a document or paper, its character, title, date, addressee or recipient and author, signatory, or sender;
- 4) If the item to be identified is printed material, its title, author, publication date, volume and relevant page numbers;
- 5) If the identity sought is information about a situation or set of circumstances, all of the facts relating to or relevant to such a situation including the identity of persons with knowledge of

such situation and the identity of all documents relating to, referring to, or otherwise pertinent to such a situation.

- 6) If the person to be identified is a corporation, or other legal entity, the laws under which it is organized, and the date of organization.

I. The term "mark(s)" means and includes trademarks, service marks, trade names, corporation names, and any other symbol or device used to identify the source, affiliation, or identity of any product, service or person.

J. The term "advertisement" means and includes all communications to third parties fixed in a tangible medium of expression and intended to promote or encourage the purchase or sale of goods or services in the United States.

K. The term "advertising" means and includes all advertisement and all other communications to third parties intended to promote or encourage the purchase or sale of goods or services in the United States.

L. The term "media outlet" is defined as any individual printed publication such as a newspaper or magazine; broadcast television or radio station; cable channel; or Internet website.

M. If in the following Interrogatories, Document Requests and Requests for Admission, privilege is alleged as to information or materials, or if an Interrogatory, Document Request or Request for Admission is otherwise not answered in full, state the specific grounds for not answering in full, and answer said Interrogatory, Document Request or Request for Admission to the extent to which it is not objected, including the identification of all information or material for which privilege may be claimed.

N. All questions are to be read so as to give the question the broadest possible meaning, so that, for example, when either of the terms "and" or "or" is used, it is to be construed as "and/or." Similarly use of the singular also includes the plural, use of any female pronouns also includes the male, and so forth.

O. Unless otherwise noted, the terms "sell," "advertise," "market," and "promote" are to be interpreted as encompassing both the present act and the future intended act (e.g., "sell" shall also mean "intend to sell").

P. Unless otherwise noted, the geographic scope of these discovery requests is limited to the United States.

INTERROGATORIES

1. Identify each place of business which Registrant presently maintains in connection with trademark usage or trademark licensing in the United States, and describe the type of business activities in each place of business.

2. Identify any assignment, license, distribution agreement, or other permitted use agreements with respect to any Products bearing the SUNKISS mark of which Registrant is aware.

3. Identify any United States trademark applications or registrations owned by Registrant which incorporate the term "Sunkiss."

4. Identify any assignment, license, distribution agreement, or other permitted use agreements to which Registrant and Ayotte Techno-Gaz Inc are parties and which references the intellectual property (including but not limited to trademarks) of either or both parties.

5. Identify any assignment, license, distribution agreement, or other permitted use agreements to which Registrant and American Industrial Ovens are parties and which references the intellectual property (including but not limited to trademarks) of either or both parties.

6. Identify and describe each Product Registrant sells under the SUNKISS mark.

7. For each Product identified in response to Interrogatory No. 6, above, identify the earliest date susceptible to proof when Registrant made such sales of that Product in the United States.

8. Identify the date that Registrant first used the SUNKISS mark in commerce in the United States.

9. For each Product identified in response to Interrogatory No. 6, identify the manufacturer or supplier from which Registrant acquires said Product.

10. Identify each person having knowledge of the dates and circumstances surrounding Registrant's first use and/or alleged trademark use of the SUNKISS mark in connection with each Product identified in response to Interrogatory No. 6.

11. Identify three individuals most knowledgeable about the nature of the Registrant's business including the advertising, marketing, manufacturing, sales and/or licensing of Products bearing the SUNKISS mark.

12. Identify each person having knowledge of the dates and/or circumstances surrounding Registrant's creation, adoption, and/or acquisition of the SUNKISS marks.

13. For each Product identified by Registrant in response to Interrogatory No. 6 as being sold under the SUNKISS mark, set forth the amount of sales in dollars in the United States for the past ten years, broken down on a yearly basis.

14. Identify the total amount of marketing and/or advertising expenditures for Products bearing the SUNKISS mark in the United States incurred by Registrant over the past ten years.

15. Explain the significance of the term "Sunkiss" to Registrant.

16. Identify all third party uses, through license agreements or otherwise, of the SUNKISS mark in the United States of which Registrant is aware, including but not limited to uses of the SUNKISS mark in combination with other words, phrases or designs.

17. Identify and describe each Product Ayotte Techno-Gaz sells under the SUNKISS mark.

18. For each Product identified by Registrant in response to Interrogatory No. 17 as being sold under the SUNKISS mark, set forth the number of units sold in the United States for the past ten years, broken down on a yearly basis.

19. For each Product identified in response to Interrogatory No. 17, identify the manufacturer or supplier from which Ayotte Techno-Gaz acquires said Product.

20. Identify and describe each Product American Industrial Ovens sells under the SUNKISS mark.

21. For each Product identified by Registrant in response to Interrogatory No. 20 as being sold under the SUNKISS mark, set forth the number of units sold in the United States for the past ten years, broken down on a yearly basis.

22. For each Product identified in response to Interrogatory No. 20, identify the manufacturer or supplier from which Ayotte Techno-Gaz acquires said Product.

23. Identify and explain the corporate relationship, if any, between Registrant and Ayotte Techno-Gaz.

24. Identify and explain the corporate relationship, if any, between Registrant and American Industrial Ovens.

25. Identify and explain the corporate relationship, if any, between Ayotte Techno-Gaz and American Industrial Ovens.

26. Identify all outlets through which third-parties sell Products under the SUNKISS mark. Identify any assignment, license, distribution agreement, or other permitted use agreements with respect to any Products bearing the SUNKISS mark of which Registrant is aware.

27. Identify any websites through which Registrant currently advertises or sells Products bearing the SUNKISS mark.

28. Identify any other marks incorporating the term "Sunkiss" which Registrant has used in connection with the sale, advertisement, or promotion of goods or services.

29. For each mark identified in response to the preceding Interrogatory, identify the products and services sold, advertised and/or marketed by Registrant under that mark.

30. Identify all other uses by Registrant of term "Sunkiss," alone or in combination with other elements.

31. Identify all persons who have participated in any way in the preparation of the answer or responses to these Interrogatories. If more than one individual is identified, state specifically, with reference to Interrogatory numbers, the areas of participation of each such person.

Respectfully Submitted,

By: Kristen Mogavero

Jess M. Collen
Kristen A. Mogavero
COLLEN IP
THE HOLYOKE-MANHATTAN BUILDING
80 South Highland Avenue
Ossining, NY 10562
(914) 941-5668 Tel.
(914) 941-6091 Fax
Counsel for Petitioner FINAM

Date: June 16, 2014

CERTIFICATE OF SERVICE

I, Meaghan C. Machcinski, hereby certify that on June 16th, 2015, I caused true and correct copies of "Petitioner's First Set of Interrogatories," "Petitioner's First Requests for the Production of Documents and Things," and "Petitioner's First Set of Requests for Admission" to be served upon Registrant's Attorney of Record at the following addresses:

Ms. Rebecca J. Stempien Coyle
Levy & Grandinetti
PO Box 18385
Washington, DC 20036-8385
mail@levygrandinetti.com

Via first-class mail, postage pre-paid and by e-mail.

Said service having taken place this 16th day of June, 2015

A handwritten signature in black ink, appearing to read "Meaghan C. Machcinski", is written over a horizontal line.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849

Reg. No.: 1,200,333

PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and Rule 2.120(h) of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM (hereafter, "Petitioner"), through its undersigned counsel, hereby requests that Registrant Sunkiss Thermoreactors, Inc. ("Registrant") make the following admissions within thirty (30) days after service of these requests.

In answering these requests for admission, Registrant is required to admit or deny each request based on information as is available to Registrant and its agents, including information in the possession of Registrant's attorneys, investigators and other representatives. For each of these requests for admission to which Registrant responds by asserting that it lacks sufficient information and/or knowledge, Registrant must state in detail the information required to answer said admission, and the steps taken by Registrant to investigate and/or obtain information in order to answer said request. These requests are deemed continuing and, to the extent that the answers may be enlarged, diminished or otherwise modified by information acquired by Registrant subsequent to the service of answers hereto, Registrant is requested

promptly thereafter to serve supplemental answers reflecting such changes, where required by the Federal Rules of Civil Procedure.

Please note the instructions and definitions included in the Petitioner's First Set of Interrogatories, served contemporaneously herewith, which are incorporated by reference and made a part hereof, as if fully stated herein.

REQUESTS

1. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are genuine pursuant to the Federal Rules of Evidence.
2. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are part of the business records of Registrant kept in the normal course of Registrant's business.
3. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Registrant on the grounds of relevance.
4. Registrant has entered into agreement(s) with one or more third parties granting Registrant the right to use the SUNKISS mark.
5. Registrant has entered into agreement(s) with one or more third parties granting Registrant the right to use the SUNKISS mark and such agreement(s) are still valid and in effect.
6. Registrant has entered into licensing agreement(s) granting third-parties the right to use the SUNKISS mark.

7. Registrant has entered into licensing agreement(s) with Ayotte Techno-Gaz, Inc. regarding use of the SUNKISS mark in the United States.
8. Registrant has entered into licensing agreement(s) with American Industrial Ovens regarding use of the SUNKISS mark in the United States.
9. All of Registrant's licensing agreements which grant a third-party the right to use the SUNKISS mark reserve Registrant's right to monitor the licensee's use of the SUNKISS mark.
10. All of Registrant's licensing agreements which grant a third-party the right to use the the SUNKISS mark reserve Registrant's right to inspect the licensee's use of the SUNKISS mark.
11. Registrant has investigated its licensees' use of the SUNKISS mark.
12. Registrant has monitored its licensees' use of the SUNKISS mark.
13. Registrant has a standard procedure for monitoring its licensees' use(s) of the SUNKISS mark.
14. Registrant monitors its licensees' use of the SUNKISS mark to ensure compliance with Registrant's quality control standards.
15. Registrant has hired a third-party to monitor its licensees' use of the SUNKISS mark to ensure that the licensees' use complies with Registrant's quality control standards.
16. The third-party hired by Registrant to monitor its licensees' use(s) of the SUNKISS mark reviews the licensees' use(s) of the SUNKISS mark on a regularly scheduled basis.
17. The third-party hired by Registrant to monitor its licensees' use(s) of the SUNKISS mark employs a standard procedure for monitoring the licensees' use of the SUNKISS mark.
18. The third-party hired by Registrant to monitor its licensees' use(s) of the SUNKISS mark

provides reports to Registrant regarding the licensees' use(s) of the SUNKISS mark.

19. Registrant does not monitor its licensees' use of the SUNKISS mark.
20. Registrant does not police the SUNKISS mark.
21. Registrant has documents evidencing Registrant's policing of the SUNKISS mark.
22. Registrant is aware of instances of a licensee's use of the SUNKISS mark which does not conform to Registrant's quality control standards.
23. Registrant has taken steps to prevent a licensee's use of the SUNKISS mark which does not conform to Registrant's quality control standards.
24. Registrant has terminated a license agreement because the licensee did not meet Registrant's quality control standards for the SUNKISS mark.
25. A third-party has taken steps on Registrant's behalf to prevent a licensee's use of the SUNKISS mark which does not conform to Registrant's quality control standards.
26. Registrant does not sell watches bearing the SUNKISS mark directly.
27. Registrant has authorized a licensee to manufacture goods bearing the SUNKISS mark.
28. Registrant has authorized a licensee to sell goods bearing the SUNKISS mark.
29. Registrant's only sales in the United States are through a third party.
30. Registrant does not directly sell any goods bearing the SUNKISS mark in the United States.
31. Registrant has provided all evidence in its custody, control or possession which would support a claim that Registrant has continuously used the SUNKISS mark in commerce on space heaters since 1983.
32. Registrant has provided all evidence in its custody, control or possession which would

support a claim that Registrant has continuously used the SUNKISS mark in commerce on air conditioners since 1983.

33. Registrant has provided all evidence in its custody, control or possession which would support a claim that Registrant has continuously used the SUNKISS mark in commerce on refrigerators since 1983.

Respectfully Submitted,

By: Kristen Mogavero

Jess M. Collen

Kristen A. Mogavero

COLLEN IP

THE HOLYOKE-MANHATTAN BUILDING

80 South Highland Avenue

Ossining, NY 10562

(914) 941-5668 Tel.

(914) 941-6091 Fax

Counsel for Petitioner FINAM

Dated: June 16, 2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849

Reg. No.: 1,200,333

**PETITIONER'S FIRST SET OF REQUESTS FOR THE PRODUCTION
OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM ("Petitioner") submits herewith for production by Sunkiss Thermoreactors, Inc. ("Registrant") these Requests for the Production of Documents and Things.

Petitioner hereby requests that Registrant produce the following documents and tangible things to the attention and at the address of the Petitioner's undersigned counsel's offices at Collen IP, THE HOLYOKE-MANHATTAN BUILDING, 80 South Highland Avenue, Ossining, New York, 10562 within thirty (30) days after service of these requests. These requests shall be deemed continuing, and require production of any documents called for herein or any such documents which shall come within the custody or control of Registrant, or its agents or representatives at any time between Registrant's initial production and the further prosecution of this action.

Please note the instructions and definitions included in the Petitioner's First Set of Interrogatories, served contemporaneously herewith, which are incorporated by reference and made a part hereof, as if fully stated herein.

DOCUMENTS TO BE PRODUCED

1. All documents which refer to, relate to, or evidence the first use in interstate commerce of the SUNKISS mark by Registrant.
2. Documents evidencing any corporations, companies, partnerships, joint ventures or like organizations, registered or unregistered, through which Registrant sells, advertises and/or markets Products bearing the SUNKISS mark.
3. All documents relating to any application ever filed in the United States for federal or state registration of the SUNKISS mark.
4. All documents and other evidence which would support a claim that Registrant has continuously used the SUNKISS mark in commerce on the goods and services listed in the Registration since 1983.
5. Documents relating to the manufacturing or developing of Products to be used with the SUNKISS mark in the United States.
6. All licenses, agreements, consents or other documents concerning use of the SUNKISS mark in the United States.
7. All documents concerning third-party use of the SUNKISS mark, whether authorized or unauthorized, in the United States.
8. All licenses, assignments, consents or other agreements which reference the SUNKISS mark, whether or not Registrant is a party.
9. All documents pertaining to, evidencing, or referencing the ownership of the

SUNKISS mark in the United States.

10. All licenses, agreements, consents or other documents concerning, referencing, or evidencing Ayotte Techno-Gaz's use of the SUNKISS mark in the United States.

11. All licenses, agreements, consents, or other documents concerning Ayotte Techno-Gaz's manufacturing of goods to be sold under the SUNKISS mark in the United States.

12. All licenses, agreements, consents, or other documents concerning Ayotte Techno-Gaz's procurement of goods to be sold under the SUNKISS mark in the United States.

13. All licenses, agreements, consents or other documents concerning American Industrial Oven's use of the SUNKISS mark in the United States.

14. All licenses, agreements, consents, or other documents concerning American Industrial Oven's manufacturing of goods to be sold under the SUNKISS mark in the United States.

15. All licenses, agreements, consents, or other documents concerning American Industrial Oven's procurement of goods to be sold under the SUNKISS mark in the United States.

16. All documents pertaining to, evidencing, or referencing the trademark rights of Sunkiss Societe Par Actions Simplifiee ("Sunkiss SAS") in the SUNKISS mark.

17. All assignments, licenses, consents or other agreements to which Sunkiss SAS and Registrant are parties.

18. All assignments, licenses, consents or other agreements to which Sunkiss SAS and Registrant are parties and which reference the intellectual property rights (including but not limited to trademark rights) of one or both parties.

19. All documents pertaining to, evidencing, or referencing the trademark rights of

Ayotte Techno-Gaz Inc. in the SUNKISS mark.

20. All assignments, licenses, consents or other agreements to which Ayotte Techno-Gaz Inc. and Registrant are parties.

21. All assignments, licenses, consents or other agreements to which Registrant and Ayotte Techno-Gaz Inc. are parties and which reference the intellectual property rights (including but not limited to trademark rights) of one or both parties.

22. All documents pertaining to, evidencing, or referencing the trademark rights of American Industrial Ovens. in the SUNKISS mark.

23. All assignments, licenses, consents or other agreements to which American Industrial Ovens. and Registrant are parties.

24. All assignments, licenses, consents or other agreements to which Registrant and American Industrial Ovens are parties and which reference the intellectual property rights (including but not limited to trademark rights) of one or both parties.

25. All documents evidencing each Product with which the SUNKISS mark is used in the United States by Registrant.

26. All documents evidencing each Product with which the SUNKISS mark is used in the United States by Ayotte Techno-Gaz.

27. All documents evidencing each Product with which the SUNKISS mark is used in the United States by American Industrial Ovens.

28. Samples of actual Products sold in the United States under the SUNKISS mark, with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by Registrant, in the ordinary course of business.

29. Samples of actual Products sold in the United States under the SUNKISS mark,

with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by Ayotte Techno-Gaz , in the ordinary course of business.

30. Samples of actual Products sold in the United States under the SUNKISS mark, with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by American Industrial Ovens, in the ordinary course of business.

31. Any tags or labels used by Registrant in connection with the sale of Products under the SUNKISS mark in the United States.

32. A sample of the complete packaging in which each and every Product sold or distributed by Registrant in the United States under the SUNKISS mark is:

- a. shipped from Registrant, or others authorized by Registrant, to customers;
- b. displayed at the point of sale to the ultimate users; and/or
- c. contained when sold or distributed to the ultimate users.

33. Representative invoices evidencing Registrant's yearly sales (in dollars) in the United States, of Products bearing the SUNKISS mark.

34. Representative documents identifying the number of Products bearing the SUNKISS mark sold by Registrant in the United States.

35. Representative documents identifying the number of Products bearing the SUNKISS mark sold by Ayotte Techno-Gaz in the United States.

36. Representative documents identifying the number of Products bearing the SUNKISS mark sold by American Industrial Ovens in the United States.

37. Representative documents identifying the number of Products bearing the SUNKISS mark sold by other third-parties authorized by Registrant in the United States.

38. Representative documents identifying Products bearing the SUNKISS mark that

are, or were, sold or advertised by Registrant in the United States.

39. Representative documents identifying Products bearing the SUNKISS mark that are, or were, sold or advertised by others authorized by or acting in conjunction with Registrant in the United States.

40. All documents identifying Products Registrant, or others authorized by or acting in conjunction with Registrant, plans to sell, market or develop in the United States under the SUNKISS mark in the future.

41. Samples of promotional and advertising materials, created by or on behalf of Registrant, on which the term "Sunkiss" (alone or in connection with other elements) is printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

42. A representative sample of documents relating to the advertising in the United States of any Products sold by Registrant under the SUNKISS mark, including invoices for advertising services, for each year the mark has been used.

43. A representative sample of documents relating to the promotion and marketing, including, but not limited to, point of sale and point of purchase materials, of any Products sold by Registrant, in the United States under the SUNKISS mark, for each year the mark has been used.

44. A listing of the Registrant's customers in the United States for Products sold under the the SUNKISS mark.

45. Samples of all marketing and promotional materials, including, without limitation, labels, tags, packaging, brochures, advertisements, pamphlets, manuals, product information sheets, and any other promotional merchandise or literature, on which the SUNKISS mark has

been printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

46. All documents that refer or relate to Petitioner.

47. All communications with any person other than Petitioner concerning a dispute or potential dispute regarding trademark ownership rights of the SUNKISS mark in the United States.

48. All documents which refer to, relate to, or concern a dispute or potential dispute regarding trademark ownership rights of the SUNKISS mark in the United States.

49. All documents identifying any domain names or websites owned or operated by Registrant that include the Sunkiss Mark, or the term Sunkiss, alone or in combination with other words or elements.

50. All documents identifying any domain names or websites owned or operated by a third-party that include the Sunkiss Mark, or the term Sunkiss, alone or in combination with other words or elements.

51. Documents evidencing all other uses by Registrant of the term "Sunkiss," alone or in combination with other elements.

52. All documents that constitute, evidence, reflect, describe, refer to, or relate to the first time Registrant used the SUNKISS mark on space heaters.

53. All documents that constitute, evidence, reflect, describe, refer to, or relate to the first time Registrant used the SUNKISS mark on air conditioners.

54. All documents that constitute, evidence, reflect, describe, refer to, or relate to the first time Registrant used the SUNKISS mark on refrigerators.

55. All documents that constitute, evidence, reflect, describe, refer to, or relate to the

first time Registrant used the SUNKISS mark on goods in Class 011.

56. All documents that constitute, evidence, reflect, describe, refer to, or relate to the licensees that are allowed to sell goods bearing the SUNKISS mark.

57. All documents that constitute, evidence, reflect, describe, refer to or relate to yearly revenues that Registrant receives from licensees or other third-parties who sell Products bearing the SUNKISS mark.

58. All documents that constitute, evidence, reflect, describe, refer to or relate to yearly revenues that Registrant receives from Ayotte Techno-Gaz's sale of Products bearing the SUNKISS mark.

59. All documents that constitute, evidence, reflect, describe, refer to or relate to the yearly revenue generated from Registrant's direct sales of Products bearing the SUNKISS mark.

60. All licenses, agreements, consents or other documents granting third-parties the right to use the SUNKISS mark.

61. All documents which refer to, relate to, or evidence Registrant's right to inspect its licensee's use of the SUNKISS mark.

62. All documents which refer to, relate to, or evidence the procedure by which Registrant monitors licensees' use(s) of the SUNKISS mark.

63. All documents which refer to, relate to, or evidence the frequency with which Registrant monitors licensees' use(s) of the SUNKISS mark.

64. All communications concerning the licensees' use(s) of the SUNKISS mark as it relates to Registrant's quality control standards.

65. All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements made on behalf of Registrant with any third party regarding use of the SUNKISS

mark.

66. All documents that evidence, reflect, describe, refer to or relate to the termination of any licensee or agreement regarding use of the SUNKISS mark.

67. All documents that evidence, reflect, describe, refer to or relate to any audit reports of Registrant's licensees' use of the SUNKISS mark.

68. A representative sampling of documents that evidence, reflect, describe, refer to or relate to Registrant's efforts to monitor its licensees' use of the SUNKISS mark.

69. A representative sampling of documents that evidence, reflect, describe, refer to or relate to Registrant's policing of the SUNKISS mark.

70. All documents on which Registrant intends to rely in this proceeding, including all documents that Registrant intends to offer into evidence in this proceeding.

71. All documents identifying, referring to or relating to any person whom Registrant intends to call as a fact or expert witness in this proceeding.

72. All documents Registrant has provided or shown to any person whom Registrant intends to call as a fact or expert witness in this proceeding.

73. All documents relied upon, either in whole or in part, as a basis for any opinion rendered or to be rendered by an expert witness whom Registrant may call to testify in this proceeding.

74. All statements, affidavits, declarations, reports and communications you have received from any person who is expected to give expert testimony as an expert witness on behalf of Registrant in this proceeding.

75. All documents identified by Registrant in response to Petitioner's First Set of Interrogatories served contemporaneously herewith.

76. All documents that Registrant was required to identify, or from which Registrant obtained information, in responding to Petitioner's First Set of Interrogatories, served contemporaneously with these Requests, and which documents have not been otherwise produced in response to these Requests.

77. All documents that Registrant contends are relevant to this proceeding.

Respectfully Submitted,

By: Kristen Mogavero

Jess M. Collen
Kristen A. Mogavero
COLLEN *IP*
THE HOLYOKE-MANHATTAN BUILDING
80 South Highland Avenue
Ossining, NY 10562
(914) 941-5668 Tel.
(914) 941-6091 Fax
Counsel for Petitioner FINAM

Date: June 16, 2015

EXHIBIT 15

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849

Reg. No.: 1,200,333

PETITIONER'S SECOND SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM (hereafter, "Petitioner") hereby requests that Registrant Sunkiss Thermoreactors, Inc. ("Registrant") respond under oath or by affirmation to the following Interrogatories within thirty (30) days after service of these requests. These Interrogatories shall be deemed continuing and Registrant is requested to serve upon Petitioner, in the form of supplementary Answers, any additional information requested herein that may be known to Registrant after the date of its Answers to these Interrogatories.

INSTRUCTIONS AND DEFINITIONS

The following definitions and instructions are applicable to Petitioner's First Set of Interrogatories, Petitioner's First Request for Production of Documents and Petitioner's First Request for Admissions:

A. "Petitioner" means the named Petitioner in this action, FINAM, including its divisions, departments, subsidiaries, parents, partners, joint venture partners, officers, directors, owners, agents, employees, accountants, attorneys, any predecessor or successor in interest thereof, and all other persons acting on behalf of or for the benefit of FINAM.

B. "Registrant" or "you" shall mean the named Registrant, Sunkiss Thermoreactors, Inc., including all partners, joint venture partners, agents, employees, accountants, attorneys, any predecessor or successor in interest thereof, and all other persons acting on behalf of or for the benefit of Sunkiss Thermoreactors, Inc.

C. The term "Registration" means United States Trademark Registration No. 1,200,333.

D. The term "Registrant's Mark" means the trademark identified in United States Trademark Registration No. 1,200,333.

E. The terms "Goods" and "Products" means the items marketed and distributed or intended to be marketed and distributed by Registrant and/or the services provided.

F. The terms "data," "document" and "documents" means any writing of any kind, in any form or format, including all originals, copies, non-identical copies of all correspondence, papers, books, messages, publications, recordings, literature, letters, email communications, photographs, price lists, brochures, memoranda, notes, reports, drawings, diaries, graphic, aural, mechanical or electronic records, or any information that is stored electronically or otherwise and is capable of being retrieved, and any other writings whether in final or draft form and whether or not such draft was actually used or completed, or any "document" as otherwise described in Federal Rule of Civil Procedure 34 which is in your actual or constructive possession, custody or control.

G. "Person" means any individual, firm, corporation, partnership, proprietorship, cooperative, association, joint venture, organization, governmental body, group of natural persons, or any other entity.

H. The term "identify" or "specify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Registrant, whether or not in possession of Registrant, and whether or not alleged to be privileged, including the following information:

- 1) The present depository or depositories and the name and address of the person or persons having custody of any item to be identified unless the item is a patent, public document or person;
- 2) If the item to be identified is a person, his or her full name, address, job title, and present employers;
- 3) If the item to be identified is a document or paper, its character, title, date, addressee or recipient and author, signatory, or sender;
- 4) If the item to be identified is printed material, its title, author, publication date, volume and relevant page numbers;
- 5) If the identity sought is information about a situation or set of circumstances, all of the facts relating to or relevant to such a situation including the identity of persons with knowledge of

such situation and the identity of all documents relating to, referring to, or otherwise pertinent to such a situation.

- 6) If the person to be identified is a corporation, or other legal entity, the laws under which it is organized, and the date of organization.

I. The term "mark(s)" means and includes trademarks, service marks, trade names, corporation names, and any other symbol or device used to identify the source, affiliation, or identity of any product, service or person.

J. The term "advertisement" means and includes all communications to third parties fixed in a tangible medium of expression and intended to promote or encourage the purchase or sale of goods or services in the United States.

K. The term "advertising" means and includes all advertisement and all other communications to third parties intended to promote or encourage the purchase or sale of goods or services in the United States.

L. The term "media outlet" is defined as any individual printed publication such as a newspaper or magazine; broadcast television or radio station; cable channel; or Internet website.

M. If in the following Interrogatories, Document Requests and Requests for Admission, privilege is alleged as to information or materials, or if an Interrogatory, Document Request or Request for Admission is otherwise not answered in full, state the specific grounds for not answering in full, and answer said Interrogatory, Document Request or Request for Admission to the extent to which it is not objected, including the identification of all information or material for which privilege may be claimed.

N. All questions are to be read so as to give the question the broadest possible meaning, so that, for example, when either of the terms "and" or "or" is used, it is to be construed as "and/or." Similarly use of the singular also includes the plural, use of any female pronouns also includes the male, and so forth.

O. Unless otherwise noted, the terms "sell," "advertise," "market," and "promote" are to be interpreted as encompassing both the present act and the future intended act (e.g., "sell" shall also mean "intend to sell").

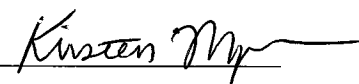
P. Unless otherwise noted, the geographic scope of these discovery requests is limited to the United States.

INTERROGATORIES

1. Identify the documents identified as Bates Nos. SUNKISS000224 through SUNKISS000246.
2. Identify the documents identified as Bates Nos. SUNKISS000004 through SUNKISS000005.
3. Identify the documents identified as Bates Nos. SUNKISS000295 through SUNKISS000306.
4. Identify the documents identified as Bates Nos. SUNKISS000222 through SUNKISS000223.
5. Identify any other trademarks under which catalytic infrared emitters are sold or have been sold since 2008 by Registrant, or any third party on behalf of Registrant, in the United States.
6. Identify all Goods on which Registrant, Ayotte Techno-Gaz, or American Industrial Ovens has used the SUN-SPOT mark in the United States.
7. Identify the date of first use of the SUN-SPOT mark in association with the Goods identified in response to Interrogatory No. 6.
8. Identify the date of last use of the SUN-SPOT mark in association with the Goods identified in response to Interrogatory No. 6.
9. Identify the amount of sales (in U.S. dollars) of the goods Goods identified in response to Interrogatory No. 6 sold by Registrant, or any third party on behalf of Registrant, broken down by year from the date of the first sale to present.
10. Identify the corporate officers of Registrant and their positions.
11. Identify the corporate officers of Ayotte Techno-Gaz and their positions.

12. Identify the corporate officers of American Industrial Ovens and their positions.
13. Identify the corporate officers of 9140-3543 Quebec Inc.
14. Identify the corporate officers of 9063-8974 Quebec Inc.
15. Identify the amount of sales (in U.S. dollars) of any product which includes a catalytic infrared emitter sold by Registrant, or any third party on behalf of Registrant, broken down by year from 2008 to present.

Respectfully Submitted,

By: 

Jess M. Collen

Kristen A. Mogavero

COLLEN IP

THE HOLYOKE-MANHATTAN BUILDING

80 South Highland Avenue

Ossining, NY 10562

(914) 941-5668 Tel.

(914) 941-6091 Fax

Counsel for Petitioner FINAM

Date: September 10, 2015

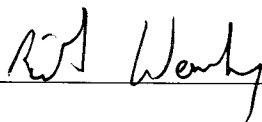
CERTIFICATE OF SERVICE

I, Richard Weinberg, hereby certify that on September 10, 2015, I caused true and correct copies of "Petitioner's Second Set of Interrogatories" to be served upon Registrant's Attorney of Record at the following addresses:

Ms. Rebecca J. Stempien Coyle
Levy & Grandinetti
PO Box 18385
Washington, DC 20036-8385
mail@levygrandinetti.com

Via first-class mail, postage pre-paid and by e-mail.

Said service having taken place this 10th day of September, 2015



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849

Reg. No.: 1,200,333

**PETITIONER'S SECOND SET OF REQUESTS FOR THE PRODUCTION
OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM ("Petitioner") submits herewith for production by Sunkiss Thermoreactors, Inc. ("Registrant") these Requests for the Production of Documents and Things.

Petitioner hereby requests that Registrant produce the following documents and tangible things to the attention and at the address of the Petitioner's undersigned counsel's offices at Collen IP, THE HOLYOKE-MANHATTAN BUILDING, 80 South Highland Avenue, Ossining, New York, 10562 within thirty (30) days after service of these requests. These requests shall be deemed continuing, and require production of any documents called for herein or any such documents which shall come within the custody or control of Registrant, or its agents or representatives at any time between Registrant's initial production and the further prosecution of this action.

Please note the instructions and definitions included in the Petitioner's Second Set of Interrogatories which are incorporated by reference and made a part hereof, as if fully stated herein.

DOCUMENTS TO BE PRODUCED

1. All documents which refer to the goods sold by Registrant under the SUNKISS Mark as "space heaters."
2. All documents which refer to the goods sold by Ayotte Techno-Gaz under the SUNKISS Mark as "space heaters."
3. All documents which refer to the goods sold by American Industrial Ovens under the SUNKISS Mark as "space heaters."
4. All brochures, promotional materials, or other marketing materials used by Registrant, Ayotte-Techno Gaz, or American Industrial Ovens which includes the phrase "space heater."
5. All invoices or other documents evidencing sales of goods sold under the SUNKISS Mark by Registrant in the United States from 2008 to present.
6. All invoices or other documents evidencing sales of goods sold under the SUNKISS Mark by Ayotte Techno-Gaz in the United States from 2008 to present.
7. All invoices or other documents evidencing sales of goods sold under the SUNKISS Mark by American Industrial Ovens in the United States from 2008 to present.
8. All documents evidencing distributors which sold space heaters under the SUNKISS mark from 2008 to present.
9. All documents which evidence use of the SUN-SPOT mark by Registrant, Ayotte Techno-Gaz, or American Industrial Ovens in association with space heaters in the United States

since 2008.

10. All documents which evidence use of the SUN-SPOT mark by Registrant, Ayotte Techno-Gaz, or American Industrial Ovens in association with catalytic infrared emitters in the United States since 2008.

11. The minutes from meetings of Registrant's Board of Directors from 2008 to present.

12. The minutes from meetings of Registrant's shareholders from 2008 to present.

Respectfully Submitted,

By:



Jess M. Collen

Kristen A. Mogavero

COLLEN *IP*

THE HOLYOKE-MANHATTAN BUILDING

80 South Highland Avenue

Ossining, NY 10562

(914) 941-5668 Tel.

(914) 941-6091 Fax

Counsel for Petitioner FINAM

Date: September 10, 2015

CERTIFICATE OF SERVICE

I, Richard Weinberg, hereby certify that on September 10, 2015, I caused true and correct copies of "Petitioner's Second Set of Request for the Production of Documents and Things" to be served upon Registrant's Attorney of Record at the following addresses:

Ms. Rebecca J. Stempien Coyle
Levy & Grandinetti
PO Box 18385
Washington, DC 20036-8385
mail@levygrandinetti.com

Via first-class mail, postage pre-paid and by e-mail.

Said service having taken place this 10th day of September, 2015

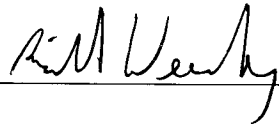


EXHIBIT 16

REDACTED

***(DOCUMENT FILED UNDER SEAL
CONTAINS CONFIDENTIAL INFORMATION)***

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FINAM,)	
)	
Petitioner,)	
	)	Cancellation No. 92/060,849
v.)	
	)	Reg. No. 1,200,333
Sunkiss Thermoreactors, Inc.,)	
	)	Mark: SUNKISS
Registrant.)	
_____)	

**REGISTRANT’S ADDENDUM TO MOTION FOR SANCTION UNDER
FED. R. CIV. P. 11, 37 C.F.R. § 11.18, AND TBMP 527.02**

The Registrant, Sunkiss Thermoreactors, Inc. (“Registrant” or “TSI”), submits the following addendum to its Motion for Sanction Under FED. R. CIV. P. 11, 37 C.F.R. § 11.18, and TBMP 527.02 (the “Motion for Sanction”). Subsequent to TSI’s service of its Motion for Sanction on the Petitioner on September 21, 2015, counsel for the parties exchanged correspondence related to the Motion for Sanction. Copies of this correspondence are attached hereto as Exhibits 17 through 20.

Respectfully submitted,

November 9, 2015
Date

/s/ Rebecca J. Stempien Coyle
Rebecca J. Stempien Coyle
Paul Grandinetti
LEVY & GRANDINETTI
P.O. Box 18385
Washington, D.C. 20036-8385
Telephone (202) 429-4560
Facsimile (202) 429-4564

Attorneys for Registrant

EXHIBIT 17



Telephone (914) 941-5668
Facsimile (914) 941-6091
www.collelP.com

October 5, 2015

BY FIRST CLASS MAIL
COPY BY E-MAIL: mail@levygrandinetti.com
Levy & Grandinetti
PO Box 18385
Washington, DC 20036-8385
Attention: Ms. Rebecca J. Stempien Coyle

Re: Cancellation Proceeding No. 92060849
FINAM v. Sunkiss Thermoreactors, Inc.
Our Ref. : R224

Dear Ms. Coyle:

We write in response to Registrant's proposed Motion for Sanctions. Your allegations, particularly in light of the substantial and material factual and legal issues in this proceeding, lack any good faith basis to support such a motion. Should it be filed we will be forced to pursue all remedies available.

First and foremost, Registrant's discovery responses only serve to validate Petitioner's abandonment claims. Registrant's proposed Motion focuses predominantly on the relationship between Registrant Sunkiss Thermoreactors, Inc. ("STI"), Ayotte Techno-Gaz, Inc. ("ATG"), and American Industrial Ovens, Inc. ("AIO") and how use of the SUNKISS mark by either ATG or AIO allegedly inures to the benefit of STI. Registrant makes only passing mention of its actual use of the SUNKISS mark in the form of conclusory and unsupported statements. Registrant has included sixteen exhibits totaling over 250 pages, none of which evidence continuous use of the SUNKISS mark. Registrant has not come forth with evidence of continuous use of the SUNKISS mark in association with space heaters by either STI, ATG or AIO for a period of at least three years. Registrant's discovery responses and document production to date demonstrate the material outstanding question of fact regarding Registrant's use and potential abandonment of the SUNKISS mark. For example, the invoices produced by Registrant in response to Petitioner's discovery requests do not evidence continuous use of the SUNKISS mark in association with space heaters. (See Exhibit A). Many of the invoices are for repairs, refurbishing, service calls, or parts; not space heaters.



PAPERCUT PROTOCOL
ENVIRONMENTALLY SOUND LEGAL PRACTICE

Others do not have the SUNKISS mark anywhere on them. In fact, the evidence of record raises so many factual questions that it would preclude even a motion for summary judgment; should Registrant pursue a motion for sanctions, Petitioner would need to seriously contemplate cross-moving for sanctions.

Registrant's proposed motion also chooses to omit a critical document, namely the Amendment to the License Agreement that is signed by representatives of both Sunkiss Thermoreactors, Inc. and Sunkiss SAS, and dated February 11, 2010. (See Exhibit B.) This Amendment, executed after the assignment document, explicitly states that all provisions of the 2008 License Agreement (See Exhibit C (French); Exhibit D (certified translation)) remain unchanged, with the exception of the specific changes articulated in the Amendment. Under the 2008 License Agreement, STI is permitted to use the SUNKISS mark in association with specific products and as a commercial name through an exclusive, non-transferable license granted by Sunkiss SAS. (See Exhibits C and D, Paragraph 2.1(b).) Furthermore, the 2008 license agreement retains Sunkiss SAS' right to control the presentation of the SUNKISS mark and Sunkiss SAS has the right to modify the mark. (See Exhibits C and D, Paragraph 2.2(b).) Paragraph 10.3(a) of the Agreement grants Sunkiss SAS quality control rights over the products with which the SUNKISS mark is used and Sunkiss SAS has the right to make inspection visits to final customers of STI to ensure quality. (See Exhibits C and D, Paragraph 10.3(a).)

Perhaps most critically, pursuant to the 2008 license agreement, use of the SUNKISS mark by STI inures to the benefit of Sunkiss SAS. (See Exhibits C and D, Paragraph 2.2(e).) The parties reaffirmed these particular terms via execution of the Amendment in 2010. There are certainly factual and legal questions as to whether use of the mark, if any, by Registrant, ATG, or AIO would inure to Registrant. Furthermore, in relinquishing its right to quality control and presentation of the SUNKISS mark, Registrant has effectively abandoned its rights, if it ever had any, in the SUNKISS mark. Petitioner's argument in its proposed motion, particularly on page 9 thereof, that there is no legitimate doubt about to whom the use of the SUNKISS mark inures contradicts the agreements.

This theory is far from frivolous and has substantial basis in fact and well-settled, established principles of trademark law. As explained in Petitioner's Motion to Amend, "uncontrolled licensing of a mark results in abandonment of the mark by the licensor." *Haymaker Sports, Inc. v. Turian*, 581 F.2d 257, 261 (C.C.P.A. 1978) (internal citations and quotations omitted). When a trademark owner "fails to exercise adequate quality control . . . a court may find that the trademark owner has abandoned the trademark." *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, 516 (9th Cir. 2010) (internal citations and quotations omitted). These cases explain that in the instance of naked licensing, the owner is

deemed to have abandoned their mark due to a lack of quality control. Although this is not a typical naked licensing fact pattern, Registrant has relinquished quality control of the SUNKISS mark to a third party, just as a licensor does when it engages in naked licensing. This abandonment is supported by the remaining provision of the 2008 License Agreement which provides that STI's use inures to Sunkiss SAS. Registrant's position that Petitioner's claims are "frivolous" is untenable and, even more, baseless.

A party violates Rule 11 "where it is patently clear that a claim has absolutely no chance of success. . ." *Eastway Const. Corp. v. City of New York*, 762 F.2d 243, 254 (2d Cir. 1985). "Rule 11 sanctions are reserved for extraordinary circumstances." *Shin Park v. Seoul Broad. Sys. Co.*, 2008 U.S. Dist. LEXIS 17277, at *2 (S.D.N.Y. Mar. 6, 2008) (citing *Morristown Daily Record, Inc. v. Graphic Commc'ns*, 832 F.2d 31, 32 n.1 (3d Cir. 1987)). "With respect to legal contentions, [t]he operative question is whether the argument is frivolous, i.e., the legal position has no chance of success, and there is no reasonable argument to extend, modify or reverse the law as it stands." *Bonded Life Fund, LLC v. AXA Equitable Life Ins. Co.*, 2014 U.S. Dist. LEXIS 31491, at *11 (S.D.N.Y. Feb. 28, 2014) (internal quotation and citations omitted). "With regard to factual contentions, sanctions may not be imposed unless a particular allegation is utterly lacking in support." *Storey v. Cello Holdings, L.L.C.*, 347 F.3d 370, 388 (2d Cir. 2003) (citing *O'Brien v. Alexander*, 101 F.3d 1479, 1489 (2d Cir.1996)). Respondent can make no good faith argument that Petitioner's legal claims have no chance of success or that its factual contentions are completely lacking in support.

Registrant lacks any basis to show that Petitioner's claims are being maintained for purposes of harassing STI. The mere fact that proceedings have been initiated in Canada and the United States alone does not establish "harassment." If anything, it may prove that there exists a trademark dispute between two multi-national companies.

The cases cited by Registrant in its proposed Motion illustrate that Petitioner's claims do not come close to the level of being sanctionable. In several of the cases cited by Registrant there was absolutely no evidence and no basis in fact to support the claims. See *Rodriguez v. Banco Cent.*, 155 FRD 403, 407 (DPR 1994); *B&H Med., LLC v. ABP Admin, Inc.*, 526 F.3d 257 (6th Cir. 2008); *Denny v. Hinton*, 131 F.R.D. 659 (M.D.N.C. 1990). In other cases, the Plaintiff's own testimony flatly contradicted his own claims. See *Gambello v. Time Warner Communications, Inc.*, 196 F. Supp. 2d 209 (EDNY 2009); *Perry v. SZ Rest. Corp.*, 45 F. Supp. 2d 272, 274-75 (SDNY 1999); *Blossom v. Blackhawk Datsun, Inc.*, 120 F.R.D. 91 (S.D. Ind. 1988).

Ms. Rebecca J. Stempien Coyle

October 5, 2015

Page 4 of 4 – R224

There are serious and substantial issues of fact regarding Registrant's continuous use of the SUNKISS mark, as evidenced by the invoices produced by Registrant. The discovery responses and document production provided by Registrant in response to Petitioner's requests. The series of agreements signed by Registrant and Sunkiss SAS support a claim for abandonment under trademark law. Any motion for sanctions by Registrant premised on Fed. R. Civ. P. 11 and/or 37 C.F.R. § 1.18 would be unfounded and subject to a cross-motion for sanctions, and other available remedies. We are prepared to litigate this dispute on the merits, but believe it best if both sides can avoid creating the kinds of needless satellite litigation so disfavored by the Board and the Courts.

Very truly yours,
COLLEN /P

A handwritten signature in black ink, appearing to read 'Kristen Mogavero', with a long horizontal flourish extending to the right.

Kristen Mogavero

JMC/KAM:cs

EXHIBIT

A

American Industrial Ovens Inc.

Industrial oven
Paint line
Washer
Infrared System

INDUSTRIAL PROCESS

Industrial equipments manufacturer

212 6951

Hot line USA : 1-877-499-9950 ; Montreal : (450)756-1345

Fax : (450) 756-2264

2223 Rte 131 Notre Dame De Lourdes QC J0K 1K0 Can.

www.americanovens.com

Invoiced To :

FAURECIA INTERIOR SYSTEMS
17801, East 14 Mile Road
Fraser, MI 48026

Project Address :

FAURECIA INTERIOR SYSTEMS
17801, East 14 Mile Road
Fraser, MI 48026

Jay

ORDER NO.	AUTHORIZATION	INVOICE DATE	INVOICE NO.
8000890330		2014-11-20	33

Description	Shipped quantity	Price	Amount
5 Fan 612 FC 1 X Shaft 1564.00 US 2 X Pulley 1 XSC	5	1,564.00	US\$7,820.00
2 Fan 615 C FC 1 X Shaft 2140.00US 2 X Pulley 1X SQU		2,140.00	US\$2,140.00
2 Flame Rod for burne 348.78	2	348.78	US\$697.56
2 Spark Plug (Ignition)	2	493.77	US\$987.54
1 Thermoreactor Infra Red		5,640.00	US\$5,640.00
Ref: Kimberly Busby			
Sous-total:			US\$17,285.10

Thank you

G.S.T. #857540082
Q.S.T. #1204351054

U.S. TOTAL US\$17,285.10

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000216

American Industrial Ovens Inc.



INDUSTRIAL PROCESS

microwave)
plastic - wood

Industrial equipments manufacturer
Exclusive dealer of Sunkiss thermoreactors
Refurbishing Sunkiss thermoreactors

Hot line USA : 1-800-675-0037 • Montréal : (450) 589-6144 • Fax : (514) 589-8478

Mail : 180, Arboit (industrial park), L'Assomption (Quebec) J5W 4P5

www.americanovens.com

INVOICED TO

0000ATT010
ATTC MANUFACTURING INC
10455 STATE ROAD 37
TELL CITY INDIANA IN 47586

PROJECT ADDRESS

Handwritten notes:
Pye
Mete
Cael
Monck

2012082710

AUTHORIZATION

2012082710

0000INVOICE NO.

Handwritten: Mr Brian Floyd

Description:

6 401-7301 C 500 Cell. *Panel*
2,700.00 each

AMOUNT

16200.00

P.O. Number: 21251 February 7, 2012

Reference: Mr Bran Floyd

Payment By Credit Card Master Card
confirmation today with Mr Floyd

Ship by: FEDEX 2309-5242-6
February 15, 2012

Thank you very much

16200.00

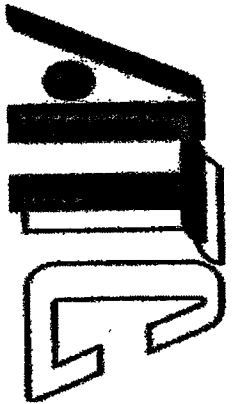
16200.00

U.S. SUB-TOTAL

G.S.T. N° 132215401
Q.S.T. N° 1012264255

U.S. TOTAL

TRADE SECRET/COMMERCIAL SENSITIVE
SUNKISS000269



Vendor Code XXXX
Vendor: American Industrial Ovens
Address 171 Tuckerton Road
Reading, PA 19605
Phone 1-800-875-0037
Fax
Contact: DANIEL AYOTTE

Ship To: ATTG Manufacturing Inc
Address 10455 State Road 37
Tell City, IN 47588
Phone 812-547-5060
Fax 812-547-8390
Attention: EVEN GRANDERSON

Requisition Date: 2/6/2012
Purchase Order

Po No: 21251

Order Date: 2/7/12

Due Date:

Item	Qty	Item No.	Description	U of M	EA	6000225	Unit Cost	Total Cost
1	6	401-7301	C500 CELL				\$ 2,700.00	\$ 16,200.00
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								

Budgeted Expense: Yes ☒ No ☐
If Unbudgeted please attach detailed explanation.
For Accounting: ☐ Capital ☐ Expense ☐ Other ☐
Use Tax: ☒ No ☐ Yes
Notes/Remarks: SUNKISS PANELS FOR PA-7.
W/M/D, COSTAL PD, ME-1210

Subtotal	\$ 16,200.00
Shipping	\$
Tax	\$
Order Total	\$16,200.00

VENDOR NOTE:
RECEIPT/ACCEPTANCE Confirmation Request. Fax back Confirmation Acceptance to Purchasing @ 812-547-8390. If above information is incorrect this Po is Void and a New Po must be issued. Please Contact Requestor or Purchasing for New/Revised Po. Failure to do so may result in payment delay. This Purchase order is valid for a Maximum of 90 days. Shipments against this Po after 90 days will require additional approval before invoice will be accepted for payment. All invoices must have Po number.

ATTG Manufacturing Inc. is certified to the ISO 9001:2000 and ISO 14001 Standards and strives for suppliers of products/services to meet or exceed established criteria. ATTG performs yearly supplier surveys.

REQUESTED BY:	Tak Kondo
APPROVED BY:	Hideoaki Ando President (Signature Required if Over \$5,000)
APPROVED BY:	Asst. Mgr. / Dept. Mgr. / Coordinator/GM
APPROVED BY:	Asst. Mgr. / Dept. Mgr. / Coordinator/GM

American Industrial Ovens Inc.



Industrial oven
Paint line
Washer
UV-line (microwave)
(metal - plastic - wood)

INDUSTRIAL PROCESS

Industrial equipments manufacturer
Exclusive dealer of Sunkiss thermoreactors
Refurbishing Sunkiss thermoreactors

Hot line USA : 1-800-675-0037 • Montréal : (450) 589-6144 • Fax : (514) 589-8478

Mail : 180, Arboit (industrial park), L'Assomption (Quebec) J5W 4P5

www.americanovens.com

INVOICED TO

PROJECT ADDRESS

000001010
UNIWELO PRODUCTS INC
2850 RAVENSWOOD RD
FLORIDA FL 33312-4994

JORDEN

AUTHORIZATION

20 INVOICE DATE 18

2012/12/18

0000 INVOICE NO.

000022

Description;

1 Refurbishing Industrial
Sunkiss Thermoreactor
ship by FEDEX account customer

Thank you very much

AMOUNT

1600.00

U.S. SUB-TOTAL

1600.00

1600.00

U.S. TOTAL

TRADE SECRET/COMMERCIALY SENSITIVE

SUNKISS000271

Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System
Burner
Paint Line-Washer

Ayotte
TECHNO-GAZ Inc.
PROCÉDÉ INDUSTRIEL

Industrial Process

americanovens.com

SUN-Spot
HT-100-200

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950

Fax : (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.

Facturé à:

Bill to:

Lieu des travaux:

Ship to:

Sumter Casket Co.
Mr Michael James
209 S. Magnolia Street
Sumter, S. Carolina 29150
USA

Sumter Casket Co.
Mr Michael James
209 S. Magnolia Street
Sumter, S. Carolina 29150
USA

P.O. Number

DE COMMANDE

Mr James

AUTORISATION

Invoice Date

DATE DE LA FACTURE

16-04-14

Invoice #

DE LA FACTURE

364

QT. SHIP

PRICE

Amount

Description	Quantité expédiée	Prix	Montant
-------------	-------------------	------	---------

Refurbishing Head arc Duo : Sunkiss Thermoreactor

1 Head catalytic pad complete 110 Volts
gas injector , thermistor
2,800.00 US \$

2 800.00

Shipment is Extra

Good Day

THANK YOU

MERCI

Veuillez émettre votre chèque à l'ordre de: Ayotte Techno-Gaz inc.

Please make a payment to : Ayotte Techno-Gaz inc.

T.P.S. #132215401

T.V.Q. #1012264255

Montant total

2 800.00

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000272

Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System
Burner
Paint Line-Washer

Ayotte
TECHNO-GAZ Inc.
PROCÉDÉ INDUSTRIEL

SUN-Spot
HT-100-200

Industrial Process americanovens.com

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950
Fax : (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.

Facturé à:

Bill to:

Lieu des travaux:

Ship to:

Powercon Corporation
Mr Joel Brown
1551 Florida Avenue PO BOX 477
Severn, Maryland 21144-0477
United States

Powercon Corporation
Mr Joel Brown
1551 Florida Avenue PO BOX 477
Severn, Maryland 21144-0477
United States

P.O. Number

DE COMMANDE

Mr Brown

AUTORISATION

Invoice Date

DATE DE LA FACTURE

11-11-14

Invoice #

DE LA FACTURE

470

QT. SHIP

PRICE

Amount

Description	Quantité expédiée	Prix	Montant
2 RX-500 Catalytic Pad Refurbishing Sunkiss Thermoreactors 2,850.00 US	2	2 850.00	5 700.00
Charges Duty on my UPS Broker Fee			397.13
Paid By VISA			
Ship By UPS			
Good Day			
GQ - TPS 5%, TVQ 9.975%			
TPS			19.86
TVQ			39.61

THANK YOU

MERCI

Veuillez émettre votre chèque à l'ordre de: Ayotte Techno-Gaz inc.

Please make a payment to : Ayotte Techno-Gaz inc.

T.P.S. #132215401
T.V.Q. #1012264255

Montant total 6 156.60

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000273

Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System
Burner
Paint Line-Washer

Ayotte
TECHNO-GAZ Inc.
PROCÉDÉ INDUSTRIEL

SUN-Spot
HT-100-200

Industrial Process americanovens.com

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950
Fax : (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.

Facturé à:

Bill to:

Lieu des travaux:

Ship to:

L & D CUSTOM WOODWORKING
M. LEROY WITTMER
3610 N. 900 EAST
MONTGOMERY, INDIANA 47558
USA

L & D CUSTOM WOODWORKING
M. LEROY WITTMER
3610 N. 900 EAST
MONTGOMERY, INDIANA 47558
USA

P.O. Number

DE COMMANDE

Mr Wittmer

AUTORISATION

Invoice Date

DATE DE LA FACTURE

25-07-14

Invoice #

DE LA FACTURE

419

QT. SHIP

PRICE

Amount

Description	Quantité expédiée	Prix	Montant
-------------	-------------------	------	---------

Detail :

SUPPLY TOUCHD SCREEN PAD AND INSTALL
Oven with Sunkiss Thermoreactors

2 000.00

Terms :

On start up an delivery

Date expedition : 29 July 2014

Price : \$ 2 000,00 US

Attn : Mister Leroy Wittmer

Good day

THANK YOU

MERCI

Veuillez émettre votre chèque à l'ordre de: Ayotte Techno-Gaz inc.

Please make a payment to : Ayotte Techno-Gaz inc.

T.P.S. #132215401

T.V.Q. #1012264255

Montant total

2 000.00

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000274

Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System
Burner
Paint Line-Washer

Ayotte
TECHNO-GAZ Inc.
PROCÉDÉ INDUSTRIEL

SUN-Spot
HT-100-200

Industrial Process americanovens.com

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950

Fax : (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.

Facturé à:

Bill to:

Lieu des travaux:

Ship to:

HI-WATT INC.
34271 JAMES J POMPO
FRASER, MI 48023
USA

HI-WATT INC.
34271 JAMES J POMPO
FRASER, MI 48023
USA

P.O. Number

DE COMMANDE

PO004877

AUTORISATION

Invoice Date

DATE DE LA FACTURE

25-07-14

Invoice #

DE LA FACTURE

421

QT. SHIP

PRICE

Amount

Description

Quantité expédiée

Prix

Montant

SS-31

3

3 THERMOSWITCHS
T-STAT ASSEMBLY WITH SUPPORTING PLATE AND
GASKET

1 260.00

Sunkiss Thermoreactor model
UNIT PRICE THERMOSWITCH : \$420.00

TOTAL PRICE : \$ 1 260,00 + SHIPPING

PRICE SHIPPING BY : UPS = \$ 60,00

60.00

PAID BY MASTER CARD JULY 25 2014

GOOD DAY

THANK YOU

MERCI

Veuillez émettre votre chèque à l'ordre de: Ayotte Techno-Gaz inc.

Please make a payment to : Ayotte Techno-Gaz inc.

T.P.S. #132215401

T.V.Q. #1012264255

Montant total

1 320.00

TRADE SECRET/COMMERCIALY SENSITIVE
SUNKISS000275

Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System
Burner
Paint Line-Washer

Ayotte
TECHNO-GAZ Inc.
PROCÉDÉ INDUSTRIEL

SUN-Spot
HT-100-200

Industrial Process americanovens.com

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950

Fax : (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.

Facturé à:

Bill to:

Lieu des travaux:

Ship to:

DEMO TECHNIC SAS
ZAE No.2 Les portes De L'Oise
281 Rue Isaac Newton
Chambly, France 60230
Europe

Cordova Brokerage International Inc
9300 Billy The Kid Street Suite 100
El Paso Texas
USA 79907

P.O. Number

DE COMMANDE

Mr Herrera

AUTORISATION

Invoice Date

DATE DE LA FACTURE

04-11-14

Invoice #

DE LA FACTURE

468

QT. SHIP

PRICE

Amount

Description	Quantité expédiée	Prix	Montant
Retrofit Industial Burner			
Refurbishing S 10000 Sunkiss Thermoreactors			
6 S 10000 : 1,925.00 US Funds Each	6	1 925.00	11 550.00

Not included:

Delivery, Installation ,Customer Fee, Tax,
packaging

Term: Net 30 Days at the reception of invoice

Good Day

THANK YOU

MERCI

Veuillez émettre votre chèque à l'ordre de: Ayotte Techno-Gaz inc.

Please make a payment to : Ayotte Techno-Gaz inc

T.P.S. #132215401

T.V.Q. #1012264255

Montant total

11 550.00

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000276

7/8/2013

Purchase Orders

Page 1

ATTC Manufacturing Inc
10455 HWY 37NPO No. ATTC-0613548
Release No. 0
Order Date 7/8/2013

Tell City IN 47586
USA
Telephone No. 812-547-5060
Fax 812-547-8390 Ext. 197

VENDOR American Industrial Ovens **SHIP TO** ATTC MANUFACTURING CO. INC
Vendor ID 2223 Rte 131 Nord 10455 STATE ROAD 37
Notre-Dame De Lourdes

LASSOMPTION JOK, 1K0
Canada
Contact DANIEL AYOTTE
Telephone No. 450-756-0219 Ext.
Fax 450-756-2264
TELL CITY IN 47586
Telephone No. 812-547-5060

INVOICE TO LINDA ROGIER - lrogier@attcmfg.com
ATTC MANUFACTURING INC
10455 STATE ROAD 37

CONFIRM TO PURCHASING DEPARTMENT
E-MAIL - bflloyd@attcmfg.com
OR BY FAX - 812-547-8390
ATTC MANUFACTURING CO., INC.
TELL CITY IN 47586

Freight Terms
Ship Via
Freight Carrier

Payment Terms
Shipping Terms

Item	Qty Unit Due Date	Item No. Cost Code Account Code	Machine/Line Number Description Specifications	Unit Cost \$	Total Cost \$
1	3.00	401-7301	MAINT STOCK		
	7/22/2013	PA-4 6000200	C500 CELL FOR SUNKISS RX500 MASTER UNIT. 401-7301 SUNKISS RX-500 MASTER UNIT 401-6911 (For Natural Gas) QUOTE# 74056-080829-1 LEADTIME 1 MONTH	2,700.00	8,100.00

If above information is incorrect, Please contact Requestor or Purchasing for New/Revised PO.
Failure to do so may result in Payment Delay. ATTC Manufacturing, Inc. is certified to the
ISO 9001:2000 and ISO 14001 Standards and strives for suppliers of products/services to meet
or exceed established criteria. ATTC performs yearly supplier surveys.
MA-FM-07

Approval

Date

Subtotal	\$	8,100.00
Tax Charge 1	\$	0.00
Tax Charge 2	\$	0.00
Shipping	\$	0.00
Misc.	\$	0.00
Order Total	\$	8,100.00

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000282

Frederick 23 09-29-12-1

Sunkiss Thermoreactors inc. USA



INDUSTRIAL PROCESS
Exclusive manufacturer of Sunkiss thermoreactors
Refurbishing Sunkiss thermoreactors
Real Sunkiss Thermoreactors

USA : 1-888-589-2909 • Montreal : (450) 589-2909 • Fax : (450) 589-8478
180, Arboit (industrial park), L'Assomption (Quebec) J5W 4P5

www.sunkiss-thermoreactors.com

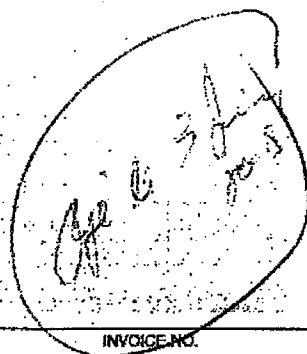
VOICED 0000ROC010

ROCHESTER INDUSTRIAL SUPPLY CO.
65 SAGINAW DRIVE
ROCHESTER NEW YORK U.S.A. 146
Tel. : 585-442-5563

PROJECT ADDRESS

M E M E

Tel.:



ORDER NO.	AUTHORIZATION	INVOICE DATE	INVOICE NO.
126247		2008/03/03	000002

Description:

1 Sunkiss Mach 11 Finishing Light
Portable Unit Sunkiss
Ship by _____

7920.00

Thank you very much.

AMOUNT

7920.00	7920.00
U.S. SUB-TOTAL	0.00
	0.00
U.S. TOTAL	7920.00

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000289

Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System
Burner
Paint Line-Washer

Ayotte
TECHNO-GAZ Inc.
PROCÉDÉ INDUSTRIEL

Industrial Process americanovens.com

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950

Fax : (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.

SUN-Spot
HT-100-200

Handwritten signature and initials inside a circle.

Facturé à:

Bill to:

Lieu des travaux:

Ship to:

Elégance Coating
Mr Yoland Cloutier
33 West Service Road
Champlain, New York 12919
USA

Elégance Coating
Mr Yoland Cloutier
33 West Service Road
Champlain, New York 12919
USA

P.O. Number
DE COMMANDE

AUTORISATION

Invoice Date
DATE DE LA FACTURE

27-01-14

Invoice #
DE LA FACTURE

296

QT. SHIP

PRICE

Amount

Description	Quantité expédiée	Prix	Montant
-------------	-------------------	------	---------

1 Unité HT 200 Industriel
Modèle portatif

Au prix de 9,895.00

Good Day

9 895.00

Paid by VISA

THANK YOU

MERCI

Veillez émettre votre chèque à l'ordre de: Ayotte Techno-Gaz inc.

Please make a payment to : Ayotte Techno-Gaz inc.

T.P.S. #132215401
T.V.Q. #1012264255

Montant total 9 895.00

TRADE SECRET/COMMERCIALLY SENSITIVE
SUNKISS000294

EXHIBIT

B

AVENANT AU CONTRAT DE LICENCE**ENTRE :**

**SUNKISS, SOCIÉTÉ PAR ACTIONS
SIMPLIFIÉES**, ayant son siège social au 6
Chemin des Vignes Zone d'activités Actipole
2B, Beligneux Bressolles 01360 Bressolles,
France, représentée aux fins des présentes par
Monsieur Michel CHARMES, président;

(ci-après désignée « **SUNKISS** »)

ET :

THERMOREACTEURS SUNKISS INC.,
corporation légalement constituée en vertu des
lois de la province de Québec, ayant son siège
social au 180, rue Arboit, L'Assomption, pro-
vince de Québec, J5W 1C3, Canada, représen-
tée aux fins des présentes par Monsieur Daniel
AYOTTE, président;

(ci-après désignée « **TSI** »)

PRÉAMBULE

ATTENDU QUE SUNKISS et TSI ont signé un contrat de licence le 7 février 2008 précisant l'exploitation et l'utilisation d'une technologie « THERMOREACTEUR » ainsi que son emploi sur un territoire donné ;

ATTENDU QUE ce contrat de licence définit dans son Article 1.6 le produit « THERMOREACTEUR » ;

ATTENDU QUE ce contrat de licence définit dans son Article 1.7 un « Produit Nouveau » fabriqué et vendu par SUNKISS ;

EN CONSIDÉRATION DE CE QUI PRÉCÈDE, LES PARTIES CONVIENNENT DE CE QUI SUIT :

SUNKISS et TSI conviennent que le texte de l'Article 1.6 est remplacé par le suivant :

« **Produit** » signifie le support réfractaire incorporant la Technologie connue sous le nom de « **THERMOREACTEUR** » qui est un émetteur d'énergie sous forme de rayonnement infrarouge et de convection, générés par la combustion catalytique de gaz tels que méthane, propane, butane ou un mélange de ceux-ci. Imprégné de catalyseurs à l'état d'extrême division, le support « **THERMOREACTEUR** » assure par oxydation, la combustion catalytique exothermique des combustibles gazeux adéquats. Ce support est intégré à une chambre de détente avec les dispositifs d'amorçage de la réaction catalytique. Peut y être éventuellement intégrée la régulation tant électrique, gaz qu'aérodynamique. Sont exclus du présent contrat les « **THERMOREACTEUR** » **SUNKISS** référencés **RXP 28VCC, RXM 28VCC, RXG 28VCC, RX 28VCC et RX2000 28VCC.**

VL
DA

SUNKISS et TSI conviennent que le texte de l'Article 1.7 est remplacé par le suivant :

« **Produit Nouveau** » signifie tout produit ajouté à la gamme existante de Produits, fabriqué et vendu par SUNKISS à l'exception des « **THERMOREACTEUR** » SUNKISS référencés RXP 28VCC, RXM 28VCC, RXG 28VCC, RX 28VCC et RX2000 28VCC;


Tous les autres articles du contrat de licence restent inchangés.

EN FOI DE QUOI, LES PARTIES ONT SIGNÉ LE PRÉSENT AVENANT :


Fait en trois (3) exemplaires, le 11 février 2012.

**SUNKISS, SOCIÉTÉ ANONYME DE
DROIT FRANÇAIS**

THERMOREACTEURS SUNKISS INC.

Par : 
Nom : Michel Chénier
Titre : Président

Date : 11 février 2012

Par : 
Nom : Daniel Ayotte
Titre : Président

Date : 11 février 2012

EXHIBIT

C

CONTRAT DE LICENCE

ENTRE :

**SUNKISS, SOCIÉTÉ PAR ACTIONS
SIMPLIFIÉE**, ayant son siège social au 6
Chemin des Vignes Zone d'activités Actipole
2B, Bellegarde B 01360 Bressolles, France,
représentée aux fins des présentes par
Monsieur Michel CHARMES, président;

(ci-après désignée « SUNKISS »)

ET :

THERMOREACTEURS SUNKISS INC.,
corporation légalement constituée en vertu des
lois de la province de Québec, ayant son siège
social au 180, rue Arboit, L'Assomption,
province de Québec, JSW 1C3, Canada,
représentée aux fins des présentes par
Monsieur Daniel AYOTTE, président;

(ci-après désignée « TSI »)

PRÉAMBULE

ATTENDU QUE SUNKISS a développé et acquis un savoir-faire technique et une expérience
précieuse quant à l'étude, la conception et la fabrication des Produits (tels que définis ci-après);

ATTENDU QUE TSI désire fabriquer et commercialiser les Produits dans le Territoire (tel que
défini ci-après);

ATTENDU que TSI désire obtenir une licence exclusive pour la Technologie afin de pouvoir
fabriquer et commercialiser les Produits, le tout selon les termes et conditions de la présente
Convention;

ATTENDU que SUNKISS accepte d'accorder à TSI une licence exclusive pour la Technologie selon
les termes et conditions des présentes;

EN CONSIDÉRATION DE CE QUI PRÉCÈDE, LES PARTIES CONVIENTENT DE CE
QUI SUIT :

1. DÉFINITIONS

Les mots et expressions qui suivent, lorsqu'ils apparaissent dans le présent Contrat ou dans toute
documentation subordonnée à celui-ci, s'interprètent, à moins d'une dérogation implicite ou explicite
dans le texte, en fonction des définitions qui leur sont attribuées ci-après :

- 1.1 « Amélioration » signifie tout développement, innovation, ajout, amélioration ou
modification se rapportant à l'Invention ou au Savoir-Faire, qu'ils soient brevetés,
brevetables ou non.

- 1.2 « Entité Affiliée » signifiera toute société mère ou filiale de TSI, toute entreprise détenue ou contrôlée par TSI ou toute entreprise détenue ou contrôlée par une entreprise détenant ou contrôlant également TSI. Aux fins du présent paragraphe, « contrôle » s'entend d'une participation au moins égale à cinquante pour cent (50 %) des actions ayant droit de vote.
- 1.3 « Information confidentielle » signifie toute information relative aux affaires d'une Partie qui n'est pas généralement disponible au public dont notamment toute information reliée à la Technologie; l'expression « information confidentielle » n'inclut cependant pas l'information :
- a) qui est du domaine public, sans la faute de la Partie à qui l'information est divulguée ou de ses administrateurs, dirigeants ou employés actuels ou anciens;
 - b) qui, après la divulgation, est reçu par cette Partie d'une autre personne qui est légalement en possession de cette information confidentielle et qui n'est pas empêchée de divulguer l'information à cette Partie;
 - c) qui est développée par une Partie de façon indépendante grâce à des personnes qui n'ont pas eu accès à, ou qui n'ont pas eu connaissance de, l'information confidentielle;
 - d) dont la divulgation a été préalablement approuvée par écrit par la Partie ayant initialement divulgué cette information; ou
 - e) dont la divulgation est nécessaire en vertu de la loi ou d'une ordonnance d'un tribunal ou autre pouvoir ayant juridiction.
- 1.4 « Invention » signifie l'invention décrite dans le brevet américain No 5,586,977 joint à l'Annexe A du présent Contrat.
- 1.5 « Marques » signifie les marques listées à l'Annexe B des présentes ainsi que toute autre marque qui pourrait être utilisée par SUNKISS en liaison avec les Produits;
- 1.6 « Produit » signifie le support réfractaire incorporant la Technologie connu sous le nom de « THERMOREACTEUR » qui est un émetteur d'énergie sous forme de rayonnement infrarouge et de convection, générés par la combustion catalytique de gaz tels que méthane, propane, butane ou un mélange de ceux-ci imprégné de catalyseurs à l'état d'extrême division, le support « THERMOREACTEUR » assure par oxydation, la combustion catalytique exothermique des combustibles gazeux adéquats. Ce support est intégré à une chambre de détente avec les dispositifs d'ancrage de la réaction catalytique. Peut y être éventuellement intégrée la régulation tant électrique, gaz qu'acoustique.
- 1.7 « Produit Nouveau » signifie tout produit ajouté à la gamme existante de Produits, fabriqué et vendu par SUNKISS;
- 1.8 « Revenus de ventes nettes » signifie les montants facturés et collectés directement ou indirectement par TSI, que ce soit de ses sous-licenciés, ses agents, ses sous-distributeurs, ses clients ou de toutes autres personnes, conformément aux principes comptables généralement reconnus par suite de la vente, autre disposition ou transaction générant des revenus en

rapport avec les Produits dans le Territoire, déduction faite notamment des éléments suivants :

- a) les rabais de gros ou les rabais sur la quantité qui sont effectivement autorisés et prélevés par TSI;
- b) les montants remboursés ou crédités par TSI;
- c) les droits de douane, les taxes d'accises, les taxes de vente et les taxes sur la valeur ajoutée sur les Produits payés par TSI;
- d) les primes d'assurances payées par TSI pour le transport des Produits;
- e) les frais de transport et de poste payés par TSI pour la livraison des Produits; et
- f) les frais de maintenance encourus par TSI.

1.9 « Savoir-Faire » signifie le savoir-faire, l'expertise, les connaissances, les secrets et données techniques commerciaux, industriels et scientifiques, incluant les concepts, idées, inventions, découvertes, données, dessins, plans, devis, spécifications, rapports, expériences, pratiques, méthodes, procédés, algorithmes, logiciels (sources, exécutables et documentation), bases de données, compilations, bases de connaissances, matériel, modèles, prototypes et échantillons, peu importe la forme sous laquelle ils se présentent, appartenant ou contrôlée par SUNKISS et se rapportant à la conception, au développement, à l'exploitation et à la réalisation des Produits, de l'invention ou des Améliorations.

1.10 « Technologie » signifie l'Invention, le Savoir-Faire et les Améliorations.

1.11 « Technologie Nouvelle » signifiera toute nouvelle application du Produit que celle-ci soit ou ne soit pas déjà en expérimentation ou commercialisée, à la date des présentes, dans l'Union européenne ou sur le territoire d'autres licenciés de SUNKISS dans le monde;

1.12 « Territoire » signifie le Canada, les États-Unis et le Mexique.

2. OBJET

2.1 Par les présentes, SUNKISS octroie à TSI, pour la durée spécifiée à la Section 16.1 du présent Contrat et conformément aux conditions énoncées ci-après une licence exclusive et non-transférable :

- a) d'exploitation et d'utilisation de la Technologie permettant à TSI de fabriquer, reconditionner, distribuer et commercialiser les Produits dans le Territoire;
- b) d'emploi dans le Territoire des Marques à titre de marque de commerce et de nom commercial en liaison avec les Produits et au sein du nom corporatif de TSI.

2.2 TSI convient que la licence octroyée conformément à la Sous-section 2.1.2 du présent Contrat comporte les réserves suivantes :

Handwritten initials/signature

- a) TSI convient que les Marques devront apparaître clairement et lisiblement sur tous les Produits;
 - b) la présentation des Marques sera définie par SUNKISS, qui se réserve le droit de les modifier;
 - c) TSI pourra proposer une nouvelle présentation des Marques, sous réserve de l'approbation préalable par SUNKISS;
 - d) le Produit sera toujours dénommé « THERMOREACTEUR » dans toute communication ou publicité du Produit effectuée par TSI;
 - c) l'utilisation des Marques demeure au bénéfice de SUNKISS.
- 2.3 TSI ne pourra concéder, directement ou indirectement, aucune sous-licence relativement à la Technologie et aux Marques sans le consentement préalable et écrit de SUNKISS. TSI pourra toutefois faire appel à des distributeurs régionaux dans le cadre de la distribution et de la commercialisation des Produits dans le Territoire.

3. ASSISTANCE TECHNIQUE

3.1 Les Parties conviennent que :

- a) Pendant la durée du présent Contrat et à la demande de TSI, sous réserve d'un préavis de trente (30) jours, SUNKISS fournira à TSI la formation et l'assistance nécessaire à la fabrication, le reconditionnement, la distribution et la commercialisation des Produits dans le Territoire (ci-après la « Formation ») à des périodes raisonnables, en ce qui concerne notamment :
 - les études préliminaires et techniques;
 - l'utilisation de la Technologie et la mise en œuvre des Produits;
 - le service après-vente des Produits.
- b) TSI pourra solliciter la Formation deux (2) fois par année, pour une durée maximum, dans chaque cas, de cinq (5) jours ouvrables;
- c) La Formation sera dispensée chez TSI ou chez SUNKISS en France. La partie concernée prendra alors en charge tous les frais de déplacement, d'hébergement et de repas de son personnel délégué auprès de l'autre partie dans le cadre de la Formation;
- d) SUNKISS autorisera la visite de ses ateliers par des représentants de TSI à des périodes raisonnables et avec un préavis raisonnable, pour obtenir une telle Formation sur site au cas où cela serait nécessaire ou souhaitable pour permettre à TSI d'utiliser la Technologie, étant entendu toutefois que SUNKISS ne sera pas tenue d'autoriser les visites qui, en raison de leur période, de leur fréquence ou du nombre de visiteurs, troubleraient les activités de SUNKISS.

3.2 TSI s'engage à prendre les mesures suivantes :

ML
DP

- a) nommer et garder en poste un Directeur Technique responsable du Produit, lequel sera l'interlocuteur de SUNKISS pour toutes les questions d'ordre technique qui relèveront du présent Contrat;
- b) nommer et garder en poste un Directeur Général, lequel sera l'interlocuteur de SUNKISS pour toutes les questions d'ordre commercial et financier qui relèveront du présent Contrat;
- c) former l'ensemble du personnel qui sera susceptible d'intervenir dans la fabrication ou le reconditionnement des Produits;
- d) assurer le suivi préventif du bon fonctionnement des Produits et fournir un service après-vente irréprochable.

4. SOUS-TRAITANCE

TSI s'engage à fabriquer et assembler sous sa responsabilité les Produits dans le Territoire.

5. GARANTIES

5.1 SUNKISS déclare et garantit que :

- a) la Technologie constitue la totalité des procédés, spécifications techniques et droits nécessaires pour mettre au œuvre les Produits;
- b) SUNKISS détiant tous les droits nécessaires pour concéder la présente licence à TSI en application de la Section 2.1;
- c) la Technologie appartient exclusivement à SUNKISS qui en a le libre usage et la libre disposition;
- d) SUNKISS (et chacune de ses entités) entreprendra et continuera d'entreprendre toutes les démarches nécessaires pour maintenir en vigueur les Marques et les brevets protégeant l'Invention;
- e) aucune réclamation n'a été formulée et, à la connaissance de SUNKISS (et de chacune de ses entités), aucune réclamation n'est sur le point d'être formulée pour violation par SUNKISS des droits de propriété intellectuelle d'un tiers, portant notamment sur un brevet ou une marque en raison de la fabrication, de l'utilisation ou de la vente du Produit ou de l'utilisation des Marques et de la Technologie;
- f) aucun enregistrement, aucune approbation, acceptation d'une quelconque administration ou d'un quelconque organisme public n'est nécessaire pour autoriser la signature et l'exécution par SUNKISS du présent Contrat;
- g) SUNKISS s'engage, pendant la durée du présent Contrat, à ne divulguer à aucun tiers établi sur le Territoire ni à mettre à sa disposition la Technologie ou toute partie de celle-ci;

- h) SUNKISS s'engage à obtenir de tout licencié situé en dehors du Territoire qui, pour des motifs d'opportunités commerciales ou en raison de l'emplacement géographique du centre administratif ou décisionnaire de ses clients, souhaiterait vendre, dans les limites permises par la loi, les Produits dans le Territoire, l'engagement d'en informer préalablement SUNKISS qui en avisera TSI. SUNKISS s'engage à favoriser le rapprochement des deux licenciés concernés;
- i) SUNKISS s'engage à céder à TSI, à la demande de TSI, l'ensemble de ses droits, titre et intérêts dans les Marques ainsi que l'achalandage relié à ces Marques pour l'ensemble du Territoire ou pour un ou des pays faisant partie du Territoire ainsi qu'à exécuter tout document et poser tous les autres gestes qui pourraient être requis par TSI pour parfaire les droits de TSI dans les Marques.

- 5.2 TSI déclare et garantit qu'elle ne vendra pas les Produits en dehors du Territoire, pour quelque utilisation que ce soit.
- 5.3 Chaque Partie déclare et garantit à l'autre Partie que la signature du présent Contrat par la personne qui y a été habilitée, ainsi que l'exécution des opérations envisagées aux présentes, ont été dûment autorisées à l'échelle de l'entreprise et que le présent Contrat constitue pour chaque Partie une obligation exécutoire valide et qui la lie à l'égard de l'autre Partie, conformément à ses modalités, sauf dans la mesure où son caractère exécutoire est limité par des lois d'application générale, notamment en matière de faillite, d'insolvabilité et de moratoire.

6. PAIEMENTS

- 6.1 En considération de la présente licence, TSI s'engage à payer à SUNKISS, à partir du 1^{er} mars 2010 et jusqu'à la terminaison du Contrat, une redevance de quatre pour cent (4 %) des Revenus de ventes nettes des Produits dans le Territoire (ci-après la « Redevance »).
- 6.2 Au plus tard le trentième jour suivant la fin de chaque semestre de l'année financière de TSI et suivant la date de résiliation ou d'expiration du présent Contrat, TSI versera à SUNKISS les Redevances dues pour les Revenus de ventes nettes effectués au cours de ce semestre, le tout sous forme de chèque ou de virement bancaire, lequel sera accompagné d'un rapport détaillé indiquant :
 - a) par Produit, le nombre total de Produits vendus et le montant total des Revenus de ventes nettes pour ce semestre;
 - b) le calcul des Redevances dues à SUNKISS pour ce semestre.
- 6.3 Malgré le paiement par TSI des Redevances dues pour un semestre, dans l'éventualité d'un ajustement à la baisse de Revenus de ventes nettes, pour quelque raison que ce soit, incluant l'octroi de rabais et le retour de Produits, TSI fournira à SUNKISS un rapport détaillé indiquant le calcul de la baisse des Revenus de ventes nettes supporté par des documents à l'appui, et SUNKISS remboursera à TSI, sur demande, le montant correspondant à l'ajustement à la baisse des Revenus de ventes nettes. Alternativement, TSI pourra effectuer compensation sur le montant des Redevances à payer à SUNKISS pour un autre semestre.

NC
DA

- 6.4 Le paiement des sommes aux fins du présent Article devra être fait en monnaie courante du Canada.
- 6.5 TSI devra des intérêts de retard sur tous paiements non effectués dans les délais prévus au plus faible des taux suivants : (1) 0,5 % par mois complet, intérêts composés mensuellement, ou (2) au taux maximum autorisé par la loi. Les intérêts seront calculés pour chaque période allant de la date d'exigibilité jusqu'à la date de paiement par virement bancaire.
- 6.6 Au cas où le paiement des sommes prévues au présent Contrat donnerait lieu au versement par TSI d'une retenue à la source au profit de l'administration fiscale canadienne, en application de la Convention Fiscale signée entre la France et le Canada, TSI effectuera les formalités requises et fournira à SUNKISS les justificatifs des versements effectués.

7. CONFIDENTIALITÉ

- 7.1 Les Parties reconnaissent qu'elles peuvent se communiquer mutuellement de l'information confidentielle durant le terme du présent Contrat.
- 7.2 Chaque Partie s'engage à :
- a) utiliser l'information confidentielle uniquement pour les fins mentionnées au présent Contrat, à moins d'avoir obtenu l'accord écrit préalable de la Partie à qui appartient l'information confidentielle;
 - b) ne pas divulguer ou permettre que soit divulguée l'information confidentielle à aucun tiers. De plus, chaque Partie s'engage à restreindre la divulgation de l'information confidentielle à l'intérieur de sa propre organisation à ceux de ses employés, administrateurs, dirigeants ou mandataires qui ont spécifiquement besoin de la connaître pour les fins recherchées par le présent Contrat (les « Bénéficiaires »). Avant de divulguer l'information confidentielle à l'un des Bénéficiaires, la Partie qui fera la divulgation s'assurera que les Bénéficiaires s'engagent à maintenir la confidentialité de l'information confidentielle. Chaque Partie sera responsable à l'égard de l'autre Partie de toute divulgation de l'information confidentielle faite par l'un des Bénéficiaires ou toute autre personne à qui cette Partie avait divulgué l'information confidentielle;
 - c) traiter l'information confidentielle de la même manière et avec la même diligence qu'elle applique à sa propre information confidentielle, incluant toute la diligence raisonnablement requise.
- 7.3 Sans limiter la généralité de ce qui précède, TSI devra inscrire sur tous les documents relatifs à la Technologie :
- Information confidentielle;
 - Propriété de SUNKISS;
 - Divulgué strictement intention.
- 7.4 Les Parties reconnaissent et conviennent que l'utilisation ou la divulgation non autorisée d'informations confidentielles pourrait causer des préjudices irréparables pour lesquels la

Partie qui aura remis à l'autre Partie les informations confidentielles considérées pourrait ne pas avoir de recours judiciaire approprié, et que tout manquement réel ou envisagé au présent Article conférerait à la Partie qui aura remis lesdites informations confidentielles à l'autre Partie le droit d'obtenir réparation immédiate et cessation de telles divulgations. Les obligations énoncées au présent Article demeureront en vigueur après la résiliation ou l'expiration du présent Contrat.

7.5 Dès la réalisation ou l'expiration du présent Contrat, chaque Partie devra, à ses frais, remettre à l'autre Partie, dans les trente (30) jours, toutes les copies de documents, dossiers informatiques, graphiques, dessins ou autres objets physiques contenant de l'information confidentielle appartenant à l'autre Partie.

7.6 Les termes du présent Contrat sont réputés confidentiels.

8. AMÉLIORATIONS

8.1 Les Parties acceptent d'organiser des réunions semestrielles en des lieux et à des dates leur convenant mutuellement pour discuter des Améliorations. Cependant, l'organisation de ces réunions ne devra en aucun cas modifier l'obligation de notification rapide de toute Amélioration.

8.2 Il est expressément convenu entre les Parties que TSI avisera SUNKISS de toute Amélioration qui découlerait de l'exécution du présent Contrat.

8.3 Toutes les Améliorations développées par TSI qui découleront du présent Contrat seront la propriété exclusive de TSI de même que les brevets ou toute autre propriété intellectuelle ou industrielle qui pourraient en découler directement ou indirectement.

9. PRODUITS NOUVEAUX ET TECHNOLOGIES NOUVELLES

9.1 Pendant la durée du présent Contrat, SUNKISS devra aviser TSI de la mise au point de tout Produit Nouveau ou de toute Technologie Nouvelle. À moins que TSI informe SUNKISS par écrit dans les quatre-vingt-dix (90) jours suivant la notification de la disponibilité d'un tel Produit Nouveau ou d'une telle Technologie Nouvelle qu'elle n'entend pas commercialiser sur le Territoire ce Produit Nouveau ou utiliser cette Technologie Nouvelle, selon le cas, ce Produit Nouveau ou cette Technologie Nouvelle sera automatiquement incorporé dans la licence octroyée en vertu de la Section 2.1 du présent Contrat, sans donner lieu à aucune modification de celui-ci.

9.2 Tout avis ou information communiqué aux termes de la Section 9.1 ainsi que toute communication s'y rapportant seront considérées comme des informations confidentielles.

10. AUTRES OBLIGATIONS DE TSI

10.1 À la demande préalable écrite de SUNKISS, TSI permettra à des représentants de SUNKISS dûment autorisés de vérifier les équipements industriels servant à la fabrication des Produits. Toutefois, TSI ne sera pas tenue d'autoriser des visites qui, en raison de leur fréquence ou du nombre des représentants, troubleraient ses activités.

- 10.2 TSI s'engage à ce que les Produits soient fabriqués selon les normes de performances analogues à celles de SUNKISS et soient pour l'essentiel de qualité équivalente.
- 10.3 Les Parties conviennent que :
- a) SUNKISS pourra vérifier si les Produits fabriqués par TSI, ainsi que l'utilisation des Marques en liaison avec les Produits respectant les normes de performance et de qualité énoncées au présent Contrat. SUNKISS pourra effectuer des visites d'inspection de clients utilisateurs finaux de TSI;
 - b) SUNKISS accepte que les normes de vérification soient, dans de telles circonstances, raisonnables;
 - c) SUNKISS informera TSI des problèmes liés à la qualité ou à la performance des Produits fabriqués par TSI. Celle-ci devra prendre toutes les mesures nécessaires à la correction de tels problèmes dans un délai raisonnable.
- 10.4 TSI prendra en charge la réalisation des dépliant techniques et commerciaux qu'elle devra présenter à SUNKISS dans les six (6) mois suivant la Date d'entrée en vigueur du présent Contrat.
- 10.5 TSI, en tant que responsable de la mise au point et du marketing des Produits et de la Technologie sur le Territoire déploiera ses meilleurs efforts commerciaux pour promouvoir les Produits, organiser les campagnes publicitaires nécessaires et participer, à ses frais, aux foires, salons et autres expositions spécialisées.

11. PROTECTION DE LA TECHNOLOGIE

- 11.1 TSI avisera immédiatement SUNKISS de toute contrefaçon existante, possible ou soupçonnée de la Technologie et des Marques, qu'elle aurait relevée.
- 11.2 TSI aura le droit non exclusif d'intenter un recours à l'encontre du contrefacteur réel ou soupçonné de toute Technologie ou Marques dans le Territoire. SUNKISS s'engage à fournir toute l'information, l'assistance et le pouvoir nécessaires pour intenter un tel recours. Dans le cas où TSI serait incapable, pour une raison quelconque, de poursuivre la procédure en contrefaçon exclusivement sous son propre nom, SUNKISS signera et fera parvenir son consentement à se joindre comme partie à l'instance. Les frais et coûts de toute procédure en contrefaçon intentée par TSI aux termes de la présente Section, y compris les honoraires d'avocats, les frais de justice, dépens et débours, seront à la charge conjointe de SUNKISS et TSI. Toute transaction acceptée par TSI dans le cadre d'une telle procédure, sera soumise à l'acceptation écrite préalable de SUNKISS, qui ne saurait la refuser d'une façon injustifiée.
- 11.3 Nonobstant la Section 11.2, TSI aura le droit exclusif d'intenter en son nom propre et à ses frais, à sa seule discrétion, tout recours à l'encontre d'un contrefacteur réel ou soupçonné de l'une ou l'autre des Marques si les droits dans ces Marques ou dans l'une ou l'autre de ces Marques lui ont été cédés conformément à la Sous-section 5.1(i) du présent Contrat. SUNKISS s'engage à fournir toute l'information, l'assistance et le pouvoir nécessaires pour intenter un tel recours.

11/5/10

- 11.4 Sous réserve de la Section 11.3, SUNKISS conservera son droit d'intenter, en son nom propre et à ses frais, à sa seule discrétion, tout recours en contrefaçon après avoir consulté TSI. En un tel cas, celle-ci devra prendre toutes mesures raisonnablement requises par SUNKISS pour concourir au succès de cette instance, y compris, au besoin, s'y joindre comme partie.
- 11.5 Au cas où soit SUNKISS, soit TSI intenterait une procédure en contrefaçon de la Technologie ou des Marques aux termes des Sections 11.2 et 11.4 et que l'autre Partie ne s'y joint pas comme partie demanderesse, la demanderesse aura le droit de conserver toutes les sommes obtenues aux termes du jugement rendu ou de la transaction intervenue. Dans toute autre circonstance, à moins qu'un tribunal n'ait accordé des dommages-intérêts par jugements séparés à SUNKISS et à TSI, ou alloué un seul montant de dommages-intérêts aux deux sociétés, toute somme reçue par jugement ou par transaction sera répartie équitablement entre SUNKISS et TSI déduction faite de ladite somme (au prorata si les sommes déduites sont inférieures à la somme totale) des dépens et débours engagés par les deux sociétés relativement à cette action.

12. INCESSIBILITÉ DU CONTRAT

TSI ne pourra céder le présent Contrat en totalité ou en partie sans avoir préalablement obtenu l'accord écrit de SUNKISS.

13. LIMITATION DE RESPONSABILITÉ, INDEMNISATIONS ET ASSURANCE

- 13.1 TSI convient de défendre, d'indemniser et de garantir SUNKISS, ses sociétés affiliées, les membres de leur direction et leurs actionnaires, administrateurs, employés, mandataires et ayants droit du paiement des pertes, dommages, frais, dépens et coûts que ceux-ci pourraient avoir engagés dans le cadre de réclamations, demandes, procédures ou poursuites liés à l'exploitation par TSI de la Technologie aux termes du présent Contrat, sauf si ces réclamations découlent d'une violation des droits de propriété intellectuelle d'un tiers, de fautes commises par SUNKISS, de la négligence de SUNKISS ou du non-respect par SUNKISS des obligations contractées dans le cadre des présentes. TSI informera promptement SUNKISS de celles-ci. À la demande écrite de SUNKISS et à ses frais, TSI représentera SUNKISS et déploiera ses meilleurs efforts commerciaux pour y répondre ou les contester. Au cas où TSI omettrait de le faire, SUNKISS sera en droit d'assurer sa propre défense au regard de ses intérêts. Les frais, dépens et coûts engendrés seront remboursés par TSI à première demande. Aucune disposition des présentes ne saurait empêcher SUNKISS de présenter séparément, si elle le souhaite, à sa seule discrétion et à ses propres frais, sa défense à l'égard desdites réclamations, demandes, procédures ou poursuites.
- 13.2 SUNKISS convient de défendre, d'indemniser et de garantir TSI, ses sociétés affiliées, les membres de leur direction et leurs actionnaires, administrateurs, employés, mandataires et ayants droit du paiement des pertes, dommages, frais, dépens et coûts que ceux-ci pourraient avoir engagés dans le cadre de réclamations, demandes, procédures ou poursuites liés à l'exploitation par TSI de la Technologie aux termes du présent Contrat, dans la mesure où ces réclamations visées invoquent ou mettent en cause la contrefaçon des droits de propriété intellectuelle détenus par des tiers, incluant de brevets, des fautes commises par SUNKISS, la négligence de SUNKISS ou le non-respect par SUNKISS des obligations contractées dans le cadre des présentes. À la demande écrite de TSI et à ses frais, SUNKISS représentera TSI et

fera ses meilleurs efforts pour y répondre ou les contester. Au cas où SUNKISS omettrait de le faire, TSI sera en droit d'assurer sa propre défense au regard de ses intérêts. Les frais, dépens et coûts engendrés seront remboursés par SUNKISS à première demande. Aucune disposition des présentes ne saurait empêcher TSI de présenter séparément, si elle le souhaite, à sa seule discrétion et à ses propres frais, sa défense à l'égard desdites réclamations, demandes, procédures ou poursuites.

- 13.3 Les Parties conviennent que l'obligation de SUNKISS prévue à la Section 13.2 du présent Contrat ne sera pas applicable dans le cadre d'une réclamation d'un tiers invoquant que les Marques ou l'une ou l'autre des Marques violent ses droits de propriété intellectuelle si cette réclamation vise une ou des Marques octroyées conformément à la Sous-section 5.1(f) du présent Contrat et si cette réclamation porte sur une violation survenue après ladite octroyance.
- 13.4 SUNKISS et TSI souscriront et maintiendront, à leurs propres frais, en tout temps pendant la durée du Contrat et pendant cinq (5) années par la suite, auprès d'une compagnie d'assurances agréée ayant un rating au minimum de A, les polices d'assurances adéquates et légales et en particulier une police d'Assurance Responsabilité Civile Exploitation, après livraison et professionnelle (couvrant les erreurs, fautes, négligences, etc.). Les assurances devront couvrir tous les risques liés à l'exécution du présent Contrat. Le montant minimum de la garantie Responsabilité Civile sera de 1 000 000 de dollars CA par sinistre et année d'assurance. Le Contrat devra prévoir une renonciation à recours contre SUNKISS ou TSI, selon le cas, et ses assureurs. Les franchises du ou des contrats souscrits resteront à charge de l'assuré. Toute modification, annulation ou résiliation du ou des contrats d'assurances devra être effectuée par l'envoi d'un préavis de trente (30) jours à l'autre Partie par courrier recommandé, avec accusé réception.
- 13.5 TSI et SUNKISS remettront à l'autre Partie un exemplaire de chacune des garanties d'assurances souscrites, copie des certificats d'assurance fournis à des tiers, ou des clients, et chaque année, une attestation de leurs assureurs mentionnant le bon paiement des primes par l'assuré à ses assureurs.

14. CONTESTATIONS - DROIT APPLICABLE - LIEU DE L'ARBITRAGE

- 14.1 Les Parties conviennent de négocier en toute bonne foi les différends pouvant découler de la rédaction, de l'interprétation et de l'exécution du présent Contrat. Au cas où le litige ne serait pas résolu dans les soixante (60) jours suivant le commencement des négociations, l'une ou l'autre des Parties pourra recourir à l'arbitrage prévu à la Section 15.2.
- 14.2 Les Parties conviennent que tout désaccord ou différend relatif au présent Contrat ou découlant de son interprétation ou de son application sera tranché de façon définitive par voie d'arbitrage et à l'exclusion des tribunaux, selon les lois du Québec.

À moins que les parties n'en décident autrement dans une convention d'arbitrage, l'arbitrage se déroulera sous l'égide d'un arbitre seul et sera conduit conformément aux règles de droit et aux dispositions du *Code de procédure civile du Québec*, en vigueur au moment de ce différend. La sentence arbitrale sera finale, exécutoire et sans appel et liera les parties.

- 14.3 Le présent Contrat est régi selon les lois applicables qui sont en vigueur dans la province de Québec et au Canada.

15. DURÉE, RENOUVELLEMENT ET RÉSILIATION

- 15.1 Le présent Contrat entre en vigueur le 1^{er} mars 2008 (ci-après la « Date d'entrée en vigueur ») et demeurera en vigueur pendant une période de dix (10) à compter de la Date d'entrée en vigueur.
- 15.2 Le présent Contrat sera automatiquement reconduit pour des périodes successives de trois (3) ans, à moins qu'une des Parties n'envoie à l'autre partie, six (6) mois avant la date d'échéance du terme initial ou renouvelé du Contrat, un avis écrit de son intention de ne pas le renouveler.
- 15.3 À la survenance d'un des cas de défaut décrits ci-après, la Partie qui n'est pas en défaut pourra résilier sans délai le présent Contrat moyennant la transmission d'un avis en ce sens, adressé à l'autre Partie :
 - a) en cas de violation ou d'inexécution par l'autre Partie de l'une ou l'autre de ses obligations au titre du présent Contrat, dès lors qu'il n'y est pas remédié dans les soixante (60) jours suivant notification écrite par la Partie invoquant une telle violation ou une telle inexécution;
 - b) au cas où l'autre Partie cessait de poursuivre ses activités (pour une raison autre qu'un cas temporaire de force majeure limité à six (6) mois.
- 15.4 Si le présent Contrat prend fin pour quelque raison que ce soit, TSI restera liée par les obligations résultant du présent Contrat, en restera responsable et paiera à SUNKISS toutes les redevances engagées ou dues avant que le Contrat ne prenne fin et continuera à assurer l'entretien et les services afférents aux Produits commercialisés antérieurement sur le Territoire.
- 15.5 À la fin du présent Contrat, aucune des Parties ne sera relevée de l'une quelconque de ses obligations qui seront nées du Contrat avant la fin de celui-ci, ou qui sont relatives aux actes ou omissions ayant eu lieu avant ladite terminaison du Contrat et TSI aura le droit d'achever la fabrication des Produits et de commercialiser les Produits que TSI aura en inventaire.

SUNKISS pourra à son choix reprendre, au prix coûtant majoré de 20 %, tous les Produits que TSI aura en inventaire après la fin du Contrat, sauf lorsque la vente de ces Produits aura antérieurement fait l'objet d'un contrat entre TSI et un client utilisateur final.
- 15.6 Une fois que tous les Produits en inventaire auront été vendus conformément à la Section 16.5, TSI devra, sous réserve de l'application de la Sous-section 5.1(i), cesser immédiatement d'utiliser les Marques. TSI devra tenir SUNKISS informé des affaires courantes existantes et des contacts établis avant la fin du Contrat, afin que soit conservée la clientèle et la réputation des parties.

16. DISPOSITIONS GÉNÉRALES

- 16.1 Les notifications requises ou autorisées au présent Contrat seront faites en français par écrit et remis en main propre ou envoyés par courrier aérien urgent, sous pli recommandé payé par l'expéditeur, ou télécopiés aux adresses mentionnées au début du présent Contrat ou à toutes

11/5/04

autres adresses que les Parties pourraient préciser ultérieurement. Les notifications faites par télécopieur devront être confirmées par courrier aérien urgent, sous pli recommandé payé par l'expéditeur.

- 16.2 Le présent Contrat, y compris ses annexes et modifications écrites, constitue l'ensemble du Contrat intervenu entre les Parties relativement à son objet et remplace toute entente ou tout contrat, proposition, représentation, négociation ou accord verbal ou écrit préalablement intervenu entre les Parties.
- 16.3 Dans la mesure où les modalités du présent Contrat prévoient des droits, intérêts, devoirs, demandes, engagements et obligations postérieurs à la résiliation ou à l'expiration du présent Contrat, les modalités du présent Contrat, notamment celles de la Sous-section 5.1(i) (Cession), de l'Article 7 (Confidentialité) et de l'Article 13 (Limitation de la responsabilité, indemnisations et assurance), demeureront en vigueur après la résiliation ou l'expiration de celui-ci.
- 16.4 Dans la mesure où l'une ou l'autre des Parties, aux termes du présent Contrat, a des droits ou des obligations acquis, en cours ou non exécutés, ces obligations ou droits demeureront en vigueur après la résiliation ou l'expiration du présent Contrat.
- 16.5 Les titres des paragraphes contenus dans le présent Contrat ne sont insérés que pour la commodité des Parties et ne font pas partie du Contrat lui-même.
- 16.6 Si l'une quelconque des dispositions du présent Contrat devrait, être réellement ou était réputée nulle, illégale ou inapplicable dans n'importe quel territoire, ou était supprimée ou profondément modifiée du fait de toute autorité compétente et qu'une telle décision serait devenue définitive ou que tous les droits visant à interjeter appel de cette décision aient été épuisés, cette disposition sera réputée modifiée conformément aux lois applicables de façon à être valide et applicable. Si elle ne peut être modifiée sans altérer profondément l'intention des Parties, elle sera supprimée et la partie restante du présent accord restera en vigueur. Cependant, si ladite disposition constitue un élément déterminant du présent Contrat, les Parties s'accorderont sur les modalités d'une continuation ou sur une éventuelle résiliation du Contrat.
- 16.7 Le présent Contrat est signé en deux exemplaires, en langue française.
- 16.8 Sauf convention contraire écrite par les Parties, si l'une ou l'autre des Parties omet d'insister, à une ou à plusieurs reprises, sur la stricte exécution de l'une ou plusieurs des dispositions du présent Contrat, ou d'exercer un droit décrit au présent Contrat ou prévu par la loi, cette omission ne saurait constituer ni ne saurait être réputée constituer une renonciation ou un abandon de l'exécution de cette disposition ou de l'exercice de ce droit ni la possibilité d'exiger par la suite l'exécution stricte de cette disposition ou l'exercice strict de ce droit, les droits et obligations des Parties demeurant inchangés et continuant d'avoir leur plein effet.
- 16.9 Chaque Partie reconnaît que tout manquement aux dispositions du présent Contrat en ce qui concerne la confidentialité, l'exclusivité des licences, l'octroi des licences, l'octroi des sous-licences ou la sous-traitance de la Technologie et la mise au point des Améliorations causerait des dommages irréparables qui conférerait à la Partie qui en serait victime le droit,

nonobstant les dispositions de l'Article 13, d'en demander réparation en justice et la cessation immédiate de tels manquements.


16.10 Aucune disposition du présent Contrat ne saurait être interprétée comme faisant des Parties aux présentes des associés ou des parties à une entreprise commune, ou permettant à l'une des Parties de lier l'autre aux termes d'une convention ou d'agir pour le compte de l'autre à tout autre égard.

EN FOI DE QUOI, LES PARTIES ONT SIGNÉ LE PRÉSENT CONTRAT :

SUNKISS, SOCIÉTÉ ANONYME
DE DROIT FRANÇAIS

THERMOREACTEURS SUNKISS
INC.

Par: 
Nom: Michel Charmes
Titre: Président
Date: 7 février 2008

Par: 
Nom: Daniel Ayotte
Titre: Président
Date:

 SUNKISS
Chemin des vignes - ZA ACTIOLE 28
F01300 BRÉSCHELLES - France
Tél. 33 (0)4 22 27 21 21 - Fax 33 (0)4 22 27 21 21
SAS au capital de 500 000 €
SIRET 344 632 807 0002 - Code APE 2620M

Apr. 1. 2010 11:48AM

No. 2367 P. 16


15

ANNEXE A

Voir le brevet américain no 5,586,877 ci-joint.

12412835

ANNEXE BMarques

MARQUE DE COMMERCE	PAYS	DEMANDE NO.	ENREGISTREMENT NO.	STATUT
SUNKISS	Canada	448,571	LMC247,387	Enregistrée
THERMOREACTEUR	Canada	1,008,533	LMC571,218	Enregistrée
SUNKISS	États-Unis	73/267,623	1,200,333	Enregistrée
	États-Unis	76/373,520	2,782,806	Enregistrée

MK
DD

EXHIBIT D

LICENCE AGREEMENT

BETWEEN: **SUNKISS, SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE**, having its head office at 6, Chemin des Vignes Zone d'activités Actipole 2B, Beligneux B 01360 Bressolles, France , herein represented by its president, Michel Charmes,

(hereinafter referred to as "**SUNKISS**")

AND: **THERMORÉACTEURS SUNKISS INC.**, a corporation duly constituted under the laws of the province of Quebec, having its head office at 180 Arboit Street in the city of L'Assomption, province of Quebec, J5W 1C3 [sic], herein represented by its president, Daniel Ayotte,

(hereinafter referred to as "**TSI**")

PREAMBLE

WHEREAS SUNKISS has developed and acquired technical know-how and invaluable experience with respect to the study, design and manufacture of the Products (as hereinafter defined);

WHEREAS TSI wishes to manufacture and market the Products in the Territory (as hereinafter defined);

WHEREAS TSI wishes to obtain an exclusive licence for the Technology in order to be able to manufacture and market the Products, the whole upon the terms and conditions of this Agreement;

WHEREAS SUNKISS has agreed to grant TSI an exclusive licence for the Technology, upon the terms and conditions hereof;

NOW THEREFORE, the Parties agree to the following:

1. DEFINITIONS

The following words and terms/expressions used in this Agreement or any documents related hereto shall be construed, unless the text expressly or impliedly otherwise indicates, in accordance with the following definitions thereof:

1.1 "**Improvement**" means any development, innovation, addition, improvement or modification in relation to the Invention or the Know-how, whether or not patented or patentable.

1.2 "**Affiliate**" means any parent corporation or subsidiary of TSI, or any enterprise held or controlled by TSI or any enterprise held or controlled by an enterprise that also holds or controls TSI. For the purposes of this paragraph, "control" means an equity position of at least fifty percent (50%) of the voting shares.

1.3 "**Confidential Information**" means any information concerning the business affairs of a Party that is not generally available to the public, including in particular any information concerning the Technology; however, the term Confidential Information does not include information:

- (a) that enters the public domain other than through the fault of the Party to whom the information was disclosed or any of its current or former directors, officers or employees;
- (b) that, after disclosure thereof, is received by the Party from another person who is legally in possession thereof and not prevented from disclosing same to that Party;
- (c) that is developed by a Party independently through persons who have not had access to the Confidential Information or knowledge thereof;
- (d) the disclosure of which was previously approved in writing by the Party that initially disclosed it;
- (e) the disclosure of which is required by law or by an order of a court or other competent authority.

1.4 **"Invention"** means the invention described in US patent no. 5,586,977 attached hereto as Schedule A.

1.5 **"Marks"** means the marks listed in Schedule B hereto as well as any other mark that may be used by SUNKISS in connection with the Products.

1.6 **"Product"** means the refractory support incorporating the Technology known by the name of "THERMORÉACTEUR" which is an emitter of energy in the form of infrared radiation and convection, generated by the catalytic combustion of gases such as methane, propane, butane or a mixture thereof. Equipped with catalysers in the extreme division state, the THERMORÉACTEUR support ensures, by oxidation, the exothermic catalytic combustion of adequately combustible gases. This support is integrated with an expansion chamber with devices initiating the catalytic reaction. Electric, gas or aeraulic controls can potentially be integrated therein.

1.7 **"New Product"** means any product added to the existing range of Products manufactured and sold by SUNKISS.

1.8 **"Revenues from Net Sales"** means amounts billed and collected directly or indirectly by TSI, whether from sub-licensees, its agents, its sub-distributors, its clients or any other person, in accordance with generally recognized accounting principles, through the sale, or other disposition or transaction generating revenues in connection with the Products in the Territory, after deduction of the following:

- (a) trade or volume discounts that are duly authorized and deducted by TSI;
- (b) amounts reimbursed or credited by TSI;
- (c) customs duties, excise taxes, sales taxes and value-added taxes on the Products paid by TSI;
- (d) insurance premiums paid by TSI for the transportation of Products;
- (e) transportation and postage costs paid by TSI for the delivery of Products; and
- (f) handling costs incurred by TSI.

1.9 **"Know-how"** means the know-how, expertise, knowledge, secrets and technical, commercial, industrial and scientific information, including concepts, ideas, inventions, discoveries, data, designs, plans, specifications, reports, experiences, practices, methods, procedures, algorithms, software (sources, executables and documentation), data bases, compilations, knowledge bases, material, models, prototypes and samples, regardless of the form they are in, belonging to or controlled by SUNKISS and related to the design, development, exploitation and production of the Products, the Invention or the Improvements.

1.10 **"Technology"** means the Invention, the Know-how and the Improvements.

1.11 **"New Technology"** means any new application of the Product, whether in the testing phase or being marketed, as at the date hereof, in the European Union or in the territory of other licensees of SUNKISS anywhere in the world.

1.2 **"Territory"** means Canada, the United States and Mexico.

2. PURPOSE

2.1 SUNKISS hereby grants TSI, for the term specified in Section 16.1 hereof and upon the conditions hereinafter set forth, an exclusive and non-transferable licence:

- (a) to exploit and use the Technology allowing TSI to manufacture, recondition, distribute and market the Products in the Territory;
- (b) to use the Marks within the Territory as trademarks and commercial names in association with the Products and TSI's corporate name.

2.2 TSI agrees that the licence granted under Subsection 2.1.2 hereof is subject to the following conditions:

- (a) the Marks must appear clearly and legibly on all Products;
- (b) the presentation of the Marks will be defined by SUNKISS, which reserves the right to modify them;
- (c) TSI may propose a new presentation of the Marks, subject to prior approval by SUNKISS;
- (d) the Product shall always be designated as "THERMORÉACTEUR" in any communication or advertizing made by TSI;
- (e) SUNKISS shall continue to have the benefit of the use of the Marks.

2.3 TSI may not directly or indirectly grant any sublicense in connection with the Technology or Marks without the prior written consent of SUNKISS. TSI may however use the services of regional distributors in connection with the distribution and marketing of the Products in the Territory.

3. TECHNICAL ASSISTANCE

3.1 The Parties agree that:

(a) during the term of this Agreement and at the request of TSI, subject to thirty (30) days' prior notice, SUNKISS will provide TSI the necessary training and assistance for the manufacture, reconditioning, distribution and marketing of the Products in the Territory (hereinafter, the "Training") at reasonable periods, particularly in respect of:

- preliminary and technical studies;
- use of the Technology and implementation of the Products;
- after-sale service of the Products.

(b) TSI may request Training twice per year, for a maximum duration, in each case, of five (5) working days;

(c) the Training shall be provided at the premises of TSI or those of SUNKISS in France. The Party concerned shall assume all costs for travel, lodging and meals for its designated personnel in connection with the Training;

(d) SUNKISS shall authorize a visit to its facilities by representatives of TSI at reasonable periods and upon reasonable prior notice for the purposes of receiving such on-site Training in cases where it is necessary or desirable in order to allow TSI to use the Technology, it being understood however that SUNKISS shall not be bound to authorize visits that, because of their timing, frequency or the number of visitors, would disrupt its activities.

3.2 TSI undertakes to take the following measures:

(a) appoint and maintain in office a Technical Director responsible for the Product, who will be the contact person with SUNKISS for all technical questions in connection with this Agreement;

(b) appoint and maintain in office a General Director who will be the contact person with SUNKISS for all commercial and financial questions in connection with this Agreement;

(c) train all personnel likely to be involved in the manufacture or reconditioning of the Products;

(d) provide both proactive follow-up to ensure the proper operation of Products and impeccable after-sale service.

4. OUTSOURCING

TSI shall be responsible for manufacturing and assembling the Products in the Territory.

5. WARRANTIES

5.1 SUNKISS represents and warrants that:

- (a) the Technology includes all of the processes, technical specifications and rights necessary for the implementation of the Products;
- (b) SUNKISS holds all of the rights necessary for granting the licence to TSI pursuant to Section 2.1;
- (c) the Technology belongs exclusively to SUNKISS, which is free to use and dispose of it;
- (d) SUNKISS (and each of its entities/Affiliates) shall undertake and continue to take all necessary action to maintain the Marks and the patents protecting the Invention in force;
- (e) no claim has been made, and to the knowledge of SUNKISS (and each of its entities/Affiliates), no claim is about to be made, for any infringement by SUNKISS of the intellectual property rights of a third party, particularly in respect of a patent or mark in connection with the manufacture, use or sale of the Product or the use of the Marks and the Technology;
- (f) no registration, approval or consent of any administrative or public entity is necessary to authorize SUNKISS to sign and perform this Agreement;
- (g) SUNKISS undertakes, during the term of this Agreement, not to disclose to any third party based in the Territory or make available to it the Technology or any part thereof;
- (h) SUNKISS undertakes to obtain, from any licensee located outside the Territory who, for business-opportunity reasons or because of the geographic location of the administrative or decision-making centre of its clients, would like to sell, within the limits permitted by law, the Products in the Territory, an undertaking to so inform SUNKISS in advance, and SUNKISS shall so notify TSI. SUNKISS undertakes to promote a harmonious relationship between the two licensees concerned;
- (i) SUNKISS undertakes to grant TSI, at the latter's request, all of its right, title and interest in the Marks and the goodwill in connection therewith, for the Territory in its entirety or for one or more countries included in the Territory, and to sign any document and take any other action that may be required by TSI to perfect its interest in the Marks.

5.2 TSI represents and warrants that it will not sell the Products outside of the Territory for any use thereof whatsoever.

5.3 Each Party represents and warrants to the other Party that the execution of this Agreement by the person empowered to do so, as well as the performance of the operations contemplated hereby, have been duly authorized by all necessary corporate action and that this Agreement constitutes a valid enforceable obligation that binds it towards the other Party in accordance with its terms, except to the extent that enforceability thereof is limited by laws of general application, particularly with respect to bankruptcy, insolvency and debt-repayment moratoria.

6. PAYMENTS

6.1 In consideration of the licence granted hereby, TSI undertakes to pay SUNKISS, as of March 1, 2010 and until the termination of this Agreement, a royalty of four per cent (4%) of the Revenues from Net Sales of the Products in the Territory (the "**Royalty**" or the "**Royalties**").

6.2 No later than thirty (30) days after the end of each quarter of TSI's financial year and the date on which this Agreement terminates or expires, TSI shall pay SUNKISS the Royalties due for the Revenues from Net Sales during such quarter, by cheque or bank transfer, which payment shall be accompanied by a detailed report indicating:

(a) per Product, the total number of Products sold and the total amount of Revenues from Net Sales for that quarter;

(b) the calculation of the Royalties due to SUNKISS for that quarter.

6.3 Notwithstanding the payment by TSI of the Royalties due for a given quarter, in the event of a downward adjustment of Revenues from Net Sales for any reason whatsoever, including the granting of rebates and returns of Products, TSI shall provide SUNKISS with a detailed report showing the calculation of the decreased Revenues from Net Sales, together with supporting documents, and SUNKISS shall reimburse TSI, on request, the amount corresponding to the decrease in Revenues from Net Sales. Alternatively, TSI may effect a setoff against the amount of Royalties payable to SUNKISS in respect of another quarter.

6.4 Payment of all amounts contemplated by this section shall be in Canadian currency.

6.5 TSI shall owe interest on all payments not timely made at the lower of: (1) 0.5% per full month, compounded monthly, or (2) the maximum rate allowed by law. Such interest shall be calculated for each period starting on the date on which payment is due until the date of payment by wire transfer.

6.6 In the event that the amounts payable hereunder give rise to the payment by TSI of a withholding-at-source amount to Canadian tax authorities, TSI shall, pursuant to the taxation treaty between France and Canada, fulfil the required formalities and provide SUNKISS with supporting documents in respect of such payments.

7. CONFIDENTIALITY

7.1 The Parties acknowledge that during the term of this Agreement they may disclose Confidential Information to each other.

7.2 Each Party undertakes to:

(a) use Confidential Information only for the purposes specified in this Agreement, unless it has obtained the prior written approval of the Party to whom the Confidential Information belongs;

(b) not to disclose or allow Confidential Information to be disclosed to a third party. In addition, each Party undertakes to limit the disclosure of Confidential Information within its own organization to those of its directors, officers or agents who have a specific need to know same for the purposes sought to be achieved by this Agreement (the “Beneficiaries”). Before disclosing Confidential Information to Beneficiaries, the disclosing Party shall ensure that the Beneficiaries undertake to maintain the confidentiality of the Confidential Information. Each Party shall be liable to the other for any disclosure of Confidential Information by one of the Beneficiaries or any other person to whom the Party disclosed Confidential Information.

(c) treat Confidential Information with the same degree of care that it uses with its own Confidential Information, including all reasonable due diligence.

7.3 Without limiting the generality of the foregoing, TSI shall inscribe the following on all documents concerning the Technology:

- Confidential Information;
- Property of SUNKISS;
- Disclosure strictly prohibited.

7.4 The Parties acknowledge and agree that unauthorised use or disclosure of Confidential Information could cause irreparable harm for which the Party that provided the other Party with the Confidential Information in question may not have an appropriate legal remedy, and that any actual or anticipated breach of this Section will give the Party having provided the Confidential Information the right to obtain immediate redress and cessation of such disclosure. The obligations stipulated in this Section shall remain in effect after the termination or expiration of this Agreement.

7.5 Within thirty (30) days of the termination or expiration of this Agreement, each Party shall, at its own expense, return to the other Party all copies of documents, digital files, graphs, designs or other physical items containing Confidential Information belonging to the other Party.

7.6 The terms of this Agreement are deemed to be confidential.

8. IMPROVEMENTS

8.1 The Parties agree to organize quarterly meetings at mutually convenient locations and dates to discuss Improvements. However, the organization of such meetings shall in no case alter the obligation to promptly give notice of any Improvement.

8.2 It is expressly agreed by the Parties that TSI shall notify SUNKISS of any Improvement arising out of the performance of this Agreement.

8.3 All improvements developed by TSI and arising out of this Agreement shall be the exclusive property of TSI, together with the patents or other intellectual or industrial property directly or indirectly resulting therefrom.

9. NEW PRODUCTS AND TECHNOLOGY

9.1 During the term of this Agreement, SUNKISS shall notify TSI of the development of any New Product or New Technology. Unless TSI informs SUNKISS in writing within ninety (90) days following notice of the availability of such New Product or New Technology that it does not intend to market same within the Territory or use same, as the case may be, such New Product or New Technology shall be automatically incorporated into the licence granted under Section 2.1 hereof without thereby amending same in any way.

9.2 Any notice or information communicated pursuant to Section 9.1 as well as any communication related thereto shall be considered Confidential Information.

10. OTHER OBLIGATIONS OF TSI

10.1 Upon the prior written request of SUNKISS, TSI shall allow duly authorized representatives of SUNKISS to inspect the industrial equipment used to manufacture the Products. However, TSI shall not be bound to authorize visits which, because of their frequency or the number of such representatives, would disrupt its activities.

10.2 TSI shall ensure that the Products are manufactured in accordance with performance standards analogous to those of SUNKISS and are essentially of the same quality.

10.3 The Parties agree that:

- (a) SUNKISS may verify whether the Products manufactured by TSI, and its use of the Marks in connection therewith, respect the performance and quality standards stipulated herein. SUNKISS may make such inspection visits to final-user customers of TSI;
- (b) SUNKISS agrees that the verification standards in such circumstances shall be reasonable;
- (c) SUNKISS shall inform TSI of any problems with the quality or performance of the Products manufactured by TSI. TSI shall take all necessary measures to remedy such problems within a reasonable time.

10.4 TSI shall be responsible for producing technical and promotional brochures, which it shall submit to SUNKISS within six (6) months following the effective date of this Agreement.

10.5 As TSI is responsible for the development and marketing of the Products and the Technology within the Territory, it shall use its best commercial efforts to promote the Products, organize necessary advertizing campaigns and participate, at its expense, in trade shows, exhibitions and other such events.

11. PROTECTION OF THE TECHNOLOGY

11.1 TSI shall immediately notify SUNKISS of any actual, potential or suspected infringement of the Technology and the Marks of which it becomes aware.

11.2 TSI shall have the non-exclusive right to institute legal proceedings against an actual or suspected infringer of any Technology or Mark within the Territory. SUNKISS undertakes to provide all necessary information, assistance and authorization for the institution of such proceedings. In the event that TSI is unable, for whatever reason, to prosecute such infringement proceedings in its own name, SUNKISS shall sign and forward its consent to becoming a party to the proceedings. The fees and costs of any infringement proceedings instituted by TSI under this Section, including lawyers' fees, court costs, expenditures and disbursements shall be borne jointly by SUNKISS and TSI. Any settlement agreed to by TSI in connection with such proceedings shall be subject to the prior written consent of SUNKISS, which shall not be unjustly withheld.

11.3 Notwithstanding Section 11.2, TSI shall have the exclusive right to institute, in its own name, in its entire discretion and at its expense any proceedings against an actual or suspected infringer of any of the Marks if the rights therein have been assigned to it under Section 5.1(i) of this Agreement. SUNKISS undertakes to provide all necessary information, assistance and authorization for the institution of such proceedings.

11.4 Subject to Section 11.3, SUNKISS shall retain the right to institute, in its own name, in its entire discretion and at its expense, any infringement proceedings, after having consulted TSI. In such cases, TSI shall take all reasonable measures requested by SUNKISS to further the successful outcome of such proceedings, including, if necessary, becoming a party thereto.

11.5 In the event that either SUNKISS or TSI institutes any proceedings for infringement of the Technology or the Marks pursuant to Sections 11.2 and 11.4 and the other Party does not become a party to the proceedings as a plaintiff, the plaintiff Party shall be entitled to the entire amount of any settlement or award of damages. In all other circumstances, unless the court awards damages to SUNKISS and TSI in separate judgments, or awards a distinct amount of damages to each of them, any amount obtained pursuant to a judgment or settlement shall be shared equally by the Parties, after having deducted therefrom the amount of costs and disbursements incurred by them in connection with the proceedings (which amount shall be determined pro rata if the amounts deducted are less than the total amount).

12. NON-ASSIGNMENT OF AGREEMENT

TSI may not assign this Agreement in whole or in part without the prior written consent of SUNKISS.

13. LIMITATION OF LIABILITY, INDEMNIFICATION AND INSURANCE

13.1 TSI undertakes to defend, indemnify and hold harmless SUNKISS, its affiliates, their officers and shareholders, directors, employees, agents and assignees from any losses, damages, fees, expenses and costs they may incur in connection with claims, demands, proceedings or lawsuits related to TSI's exploitation of the Technology pursuant to this Agreement, unless such claims are based on the infringement of the intellectual property rights of a third party, a fault committed by SUNKISS, negligence on the part of SUNKISS or its failure to respect its obligations hereunder. TSI shall promptly inform SUNKISS thereof. Upon the written request of SUNKISS and at its expense, TSI shall represent

SUNKISS and use its best commercial efforts to answer or contest such claims. Should TSI fail to do so, SUNKISS shall be entitled to ensure its own defence of its interests. The fees, expenses and costs incurred shall be reimbursed by TSI on first demand. No provision hereof shall prevent SUNKISS, in its sole discretion and at its own expense, from conducting its own defence against any such claims, demands, proceedings or lawsuits, if it wishes to do so.

13.2 SUNKISS undertakes to defend, indemnify and hold harmless TSI, its affiliates, their officers and shareholders, directors, employees, agents and assignees from any losses, damages, fees, expenses and costs they may incur in connection with claims, demands, proceedings or lawsuits related to TSI's exploitation of the Technology pursuant to this Agreement, to the extent that such claims are based on the infringement of intellectual property rights of third parties (including patents), faults committed by SUNKISS, negligence on the part of SUNKISS or its failure to respect its obligations hereunder. Upon the written request of TSI and at its cost and expense, SUNKISS shall represent TSI and use its best efforts to answer or contest such claims. Should SUNKISS fail to do so, TSI shall be entitled to ensure its own defence of its interests. The fees, expenses and costs incurred shall be reimbursed by SUNKISS on first demand. No provision hereof shall prevent TSI, in its sole discretion and at its own expense, from conducting its own defence against any such claims, demands, proceedings or lawsuits, if it wishes to do so.

13.3 The Parties agree that the obligation of SUNKISS stipulated in Section 13.2 of this Agreement will not be applicable in connection with a third-party claim that the Marks or any of them infringe on its intellectual property rights, if such claim involves one or more of the Marks transferred under Subsection 5.1 (i) hereof and if the claim is for an infringement that occurred after said transfer.

13.4 SUNKISS and TSI shall, at their own expense, take out and keep in force at all times during the term of this Agreement and for the five (5) next following years, with an insurer having a minimum rating of A, adequate and lawful insurance policies, and in particular a Civil Liability Resulting from Operations policy, post-delivery and professional (covering errors, faults, negligence, etc). Such insurance shall cover all risks associated with the performance of this Agreement. The minimum amount of the civil liability coverage shall be CDN \$1,000,000 per loss and policy year. The policy shall provide for a waiver of any recourse against SUNKISS or TSI, as the case may be, and their insurers. The deductibles under the policy or policies taken out shall be borne by the insured. Any amendment, cancellation or termination of such policy or policies shall be effected by sending a thirty (30) day prior notice to the other Party by registered mail with proof of delivery.

13.5 Each Party shall provide the other with a copy of the insurance policy it has taken out, a copy of any certificate of insurance provided to third parties or customers and, each year, an attestation from its insurer that the premium has been fully paid.

14. DISPUTES – APPLICABLE LAW – PLACE OF ARBITRATION

14.1 The Parties agree to negotiate in good faith any dispute that may arise from the wording, interpretation or performance of this Agreement. In the event that the dispute is not resolved within

sixty (60) days following the start of negotiations, either Party may resort to arbitration under Section 15.2 [sic].

14.2 The Parties agree that any disagreement or dispute in connection with this Agreement or its interpretation or application shall be definitively settled by arbitration in accordance with the laws of Quebec, to the exclusion of the courts.

Unless the parties otherwise decide in an arbitration agreement, the arbitration shall be conducted before a single arbitrator, in accordance with the rules of law and the provisions of the *Code of Civil Procedure* of Quebec in effect at the time of the dispute. The arbitration award shall be final, enforceable and binding on the parties.

14.3 This Agreement is governed by the applicable laws in force in the province of Quebec and in Canada.

15. TERM, RENEWAL AND TERMINATION

15.1 This Agreement takes effect on March 1, 2008 (the "**Effective Date**") and shall remain in effect for a period of ten (10) years following the Effective Date.

15.2 This Agreement shall automatically renew for successive periods of three (3) years unless one of the Parties sends the other Party, six (6) months before the expiration of the initial or renewed term hereof, a written notice of its intention not to renew same.

15.3 Upon the occurrence of one of the events of default described below, the non-defaulting Party may immediately terminate this Agreement by sending a notice to that effect addressed to the other Party:

(a) the breach or non-performance by the other Party of any of its obligations hereunder that is not cured within sixty (60) days following written notice from the non-defaulting Party of such breach or non-performance;

(b) the other Party ceases carrying on business for a reason other than force majeure lasting no more than six (6) months.

15.4 If this Agreement terminates for whatever reason, TSI shall remain bound by its obligations hereunder and responsible for paying SUNKISS all Royalties generated or due before termination, and for performing maintenance and service on the Products theretofore marketed in the Territory.

15.5 Upon the termination of this Agreement, neither of the Parties shall be relieved of any of its obligations that arose before termination, or that pertain to acts or omissions committed before termination, and TSI shall have the right to finish the manufacture of Products and to market Products in its inventory.

SUNKISS may at its option redeem, at cost price plus 20%, all Products that TSI has in inventory after termination, except for Products that have already been disposed of by TSI under a contract with a final end-user.

15.6 Once all Products have been sold pursuant to Section 16.5 [sic], TSI shall, subject to the application of Subsection 5.1 (i), immediately cease using the Marks. TSI shall keep SUNKISS informed of its existing current business and all contacts established before termination, in order to preserve the clientele and the reputation of the parties.

16. GENERAL PROVISIONS

16.1 All notices required or authorized to be given hereunder shall be in writing, in French, and shall be hand-delivered or sent by priority air courier, in a registered, postage-paid letter, or faxed to the addresses set out in the premises hereto or any other address subsequently specified by a Party. Notices sent by fax must be confirmed in a registered, postage-paid letter delivered by priority air courier.

16.2 This Agreement together with its schedules and written amendments constitutes the entire agreement between the Parties with respect to its subject-matter and replaces any agreement, contract, proposal, representation, negotiation or oral or written accord previously concluded by the Parties.

16.3 To the extent that the provisions of this Agreement contemplate rights, interests, duties, demands, undertakings and obligations that survive the termination or expiration hereof, the provisions hereof, and specifically those of Subsection 5.1 (assignment), Section 7 (confidentiality) and Section 13 (limitation of liability, indemnification and insurance) shall remain in effect after such termination or expiration.

16.4 To the extent that either of the Parties, under the terms hereof, has acquired rights or obligations that are ongoing or not yet performed, such obligations or rights shall remain in effect after the termination or expiration hereof.

16.5 The paragraph headings herein have been included for the convenience of the Parties and do not form part of the Agreement itself.

16.6 If any of the provisions of this Agreement becomes, is or is deemed to be null, illegal or inapplicable in any territory, or is profoundly altered or deemed not to have been written by any competent authority and such decision has become definitive or all rights of appeal therefrom have been exhausted, such provision shall be deemed to have been amended in accordance with applicable law such that it is valid and applicable. If it cannot be so amended without profoundly altering the intention of the Parties, it will be expunged, and the remainder of this Agreement shall remain in effect. However, if such provision constitutes a key element of this Agreement, the Parties shall agree on the terms of a continuation or on the eventual termination hereof.

16.7 This Agreement has been executed in two original versions, in French.

16.8 Unless the Parties otherwise agree in writing, if either of them fails to insist, on one or more occasions, on the strict performance of one or more of the provisions of this Agreement, or to exercise a right provided herein or by law, such failure shall not be or be deemed to be a waiver or renunciation of the right to insist on the strict performance of such provision or to exercise such right in the future, the rights and obligations of the Parties hereto remaining unchanged and continuing to have full effect.

16.9 Each Party acknowledges that any breach of the provisions of this Agreement concerning confidentiality, licence exclusivity, the development of Improvements, the granting of licences or sublicenses or the subcontracting of the Technology would cause irreparable harm entitling the Party that is the victim of such breach, notwithstanding the provisions of Section 13, to seek a judicial remedy therefor and to demand the immediate cessation of such breach.

16.10 No provision of this Agreement is to be construed as creating a partnership or joint venture between the Parties, or as allowing one of the Parties to bind the other in an agreement or to act on behalf of the other Party in any other respect.

IN WITNESS WHEREOF THE PARTIES HAVE SIGNED THIS AGREEMENT:

[Signatures apposed February 7, 2008]

SUNKISS, SOCIÉTÉ ANONYME DE DROIT FRANÇAIS

THERMORÉACTEURS SUNKISS INC.

Per: (signature apposed)

Name: Michel Charmes

Title: President

Date: Feb. 7, 2008

Per: (signature apposed)

Name: Daniel Ayotte

Title: President

Date: Feb.11, 2010

SCHEDULE A

See attached US patent no. 5,586,877.

SCHEDULE B**Marks**

TRADEMARK	COUNTRY	APPLICATION NO.	REGISTRATION NO.	STATUS
SUNKISS	Canada	448,571	LMC247,387	Registered
THERMOREACTEUR	Canada	1,008,533	LMC571,218	Registered
SUNKISS	United States	73/267,623	1,200,333	Registered
[SUNKISS/THERMOREACTOR LOGO]	United States	76/373,520	2,782,806	Registered

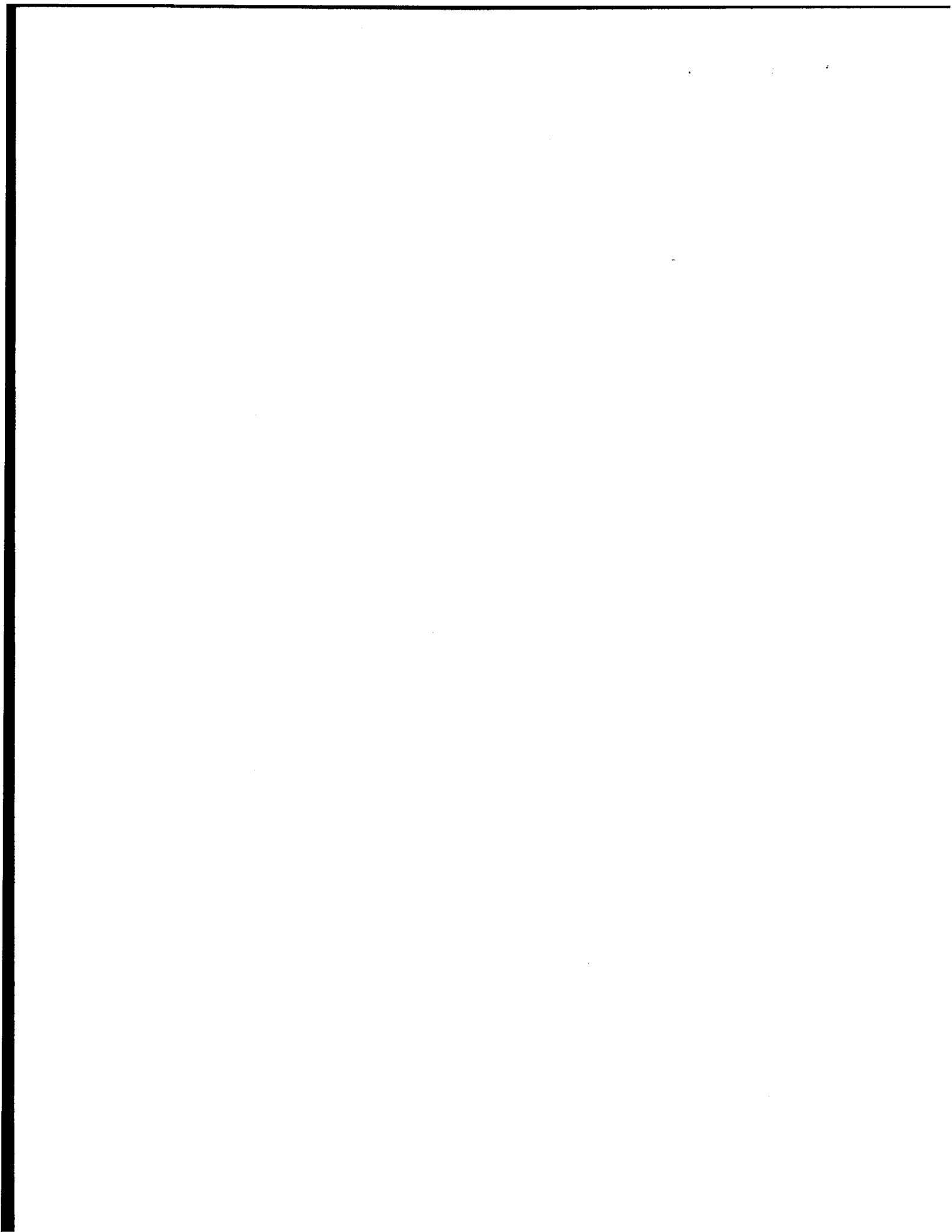


EXHIBIT 18

LEVY & GRANDINETTI
1120 CONNECTICUT AVENUE, N.W., SUITE 304
WASHINGTON, D.C. 20036
TELEPHONE: (202) 429-4560
FACSIMILE: (202) 429-4564
E-MAIL: mail@levygrandinetti.com

November 2, 2015

VIA E-MAIL AND FIRST CLASS MAIL

Ms. Kristen Mogavero
COLLEN IP INTELLECTUAL PROPERTY LAW PC
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562

Re: U.S. Trademark Registration No. 1,200,333
Cancellation Proceeding No. 92/060,849
FINAM v. Sunkiss Reactors Inc.

Dear Ms. Mogavero:

We received your letter of October 5, 2015, in response to the Registrant's Motion for Sanctions, served on September 21, 2015. Your correspondence raises new arguments which are fatally flawed, as explained below. Since these new arguments are also frivolous, we again request that FINAM withdraw its petition for cancellation. If it does not do so by noon on October 22, 2015, we will proceed with filing the Registrant's Motion for Sanctions.

Upon review of your correspondence, we understand that FINAM is contesting only (1) that the "Registrant has not come forth with evidence of continuous use of the SUNKISS mark in association with space heaters by either STI, ATG or AIO for a period of at least three years," relying on a selection of the invoices produced by the Registrant in this case and an assertion that "other[invoices] do not have the SUNKISS mark anywhere on them," and (2) that a 2010 addendum to a 2008 license agreement results in naked licensing because the 2010 addendum (which occurred *after* the 2009 assignment of the SUNKISS mark to the Registrant) includes boilerplate language along the lines of a "reaffirmation" of all portions of the 2008 license agreement that were not expressly amended in the 2010 addendum.¹

In regard to your first assertion, your selection of invoices clearly omits numerous invoices that show the sale of SUNKISS space heaters. In particular, we draw your attention to SUNKISS000294 (dated 1/27/2014); SUNKISS000211 (dated 11/24/2014); SUNKISS000218 and SUNKISS000220 (both dated 1/5/2015); SUNKISS000221 (dated 1/30/2015); SUNKISS000217 (dated 2/5/2015), and SUNKISS000219 (dated 2/19/2015). The product brochure previously

¹ We note that your correspondence was entirely silent on the points raised in the Registrant's Motion for Sanctions regarding questions of ownership.

produced by the Registrant (SUNKISS000004-SUNKISS000005) demonstrates that the SUNKISS space heaters were known by model numbers HT-100 and HT-200.

Your suggestion that TSI is required to prove “continuous use” is directly contrary to longstanding precedent on abandonment. The Federal Circuit is clear that even intermittent use of a mark suffices as proper use. “There is no rule of law that the owner of a trademark must reach a particular level of success, measured either by the size of the market or by its own level of sales, to avoid abandoning a mark.” *Person’s Co. Ltd. v. Christman*, 900 F.2d 1565, 1571, 14 U.S.P.Q.2d 1477 (Fed. Cir. 1990) (affirming 9 U.S.P.Q.2d 1477 (T.T.A.B. 1988)); *see also Wallpaper Manufacturers Ltd. v. Crown Wallcovering Corp.*, 680 F.2d 755, 759, 214 U.S.P.Q. 327, 329 (C.C.P.A. 1982).

Moreover, any assertion that an invoice must include the SUNKISS mark to be evidence of use of the mark is a red herring and not well-taken. Invoices are not specimens of use of marks for goods. TMEP 904.04(b). (“Material used by the applicant to conduct its internal business is unacceptable as a specimen of use on goods. These materials include all documents whose sole function is to carry out the applicant’s business dealings, such as invoices, bill heads, waybills, warranties, and business stationery.” (Citations omitted).) Your requirement that the SUNKISS mark be used on invoices is legally unsupported. Therefore, and for the reasons stated in the Registrant’s Motion for Sanctions, the Registrant has indeed established a lack of abandonment.

In sum, your arguments as to “nonuse” are without legal support and do not offer any reasonable legal theory or factual support which would cause us to reconsider the appropriateness of the Registrant’s Motion for Sanctions.

In regard to your new theory of “naked licensing,” such an argument is legally untenable, and you fail to offer any support for this incredible theory. When the 2009 assignment of the SUNKISS mark was consummated, TSI became the owner of the mark. Consequently, Sunkiss SAS no longer had any ability to license that same SUNKISS mark, and certainly not to TSI who then owned it. This is a basic legal principle. The trademark license portion of the 2008 license agreement (subsection 2.1) therefore was void with respect to assignment to TSI. It then clearly follows that Subsection 2.2 of the 2008 license agreement, upon which you rely, was also invalid. The language of the 2008 license agreement makes clear that the provision regarding use of the SUNKISS mark inuring to the benefit of Sunkiss SAS was expressly contingent on the validity of Sunkiss SAS’s license of the mark to TSI. (*See* your Exhibit D, Section 2.2: “the license granted in Subsection 2.1.2 [sic] hereof is subject to the following conditions.”)

Any addendum to the 2008 license agreement which occurred after the 2009 assignment cannot magically reinstate Sunkiss SAS’s ability to license a mark to TSI that TSI *already* owns. To argue that a subsequent addendum to the 2008 license agreement, an addendum that never mentions trademarks let alone the assignment or license of the trademark at issue, somehow

Ms. Kristen Mogavero
November 2, 2015
Page 3

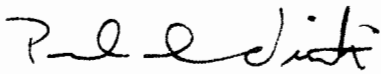
Cancellation Proceeding No. 92/060,849
FINAM v. Sunkiss Reactors Inc.

reinstated Sunkiss SAS's ability to license the SUNKISS mark to TSI (*still* the owner of the mark) is beyond novel. There is, despite your protestations to the contrary, no well-settled, established principle of law to support such a destruction of any meaning to a standing trademark assignment.

In short, nothing in your correspondence demonstrates that FINAM's cancellation proceeding is in any manner consistent with the requirements of FED. R. CIV. P. 11 or 37 C.F.R. § 11.18. Please confirm by **12:00 noon, November 5, 2015**, that FINAM will withdraw its untenable Petition for Cancellation.

If you have any questions or comments, please do not hesitate to contact us.

Sincerely yours,


for Rebecca J. Stempien Coyle

RJSC:elb

EXHIBIT 19

Paul Grandinetti

From: Kristen Mogavero <kmogavero@collenip.com>
Sent: Wednesday, November 04, 2015 6:05 PM
To: Paul Grandinetti
Cc: Jess Collen
Subject: RE: FINAM v Sunkiss Thermoreactors, Inc.

Dear Rebecca,

We are in receipt of your letter dated November 2, 2015. We note your reference to October 22 (given the mailing date of the letter, we must assume that you intended November 22). Then, toward the end you recite November 5, 2015.

Regardless of the arbitrary "deadline" you seek to impose, and without addressing the merits of your letter, we note that we will respond further but first will confer with our client. As our contact is currently out of the office, any response will be forthcoming once we are able to discuss this matter with them.

Regards,
Kristen

From: Paul Grandinetti [mailto:mail@levygrandinetti.com]
Sent: Monday, November 02, 2015 5:10 PM
To: Kristen Mogavero
Cc: docket; Jess Collen
Subject: FINAM v Sunkiss Thermoreactors, Inc.

Dear Ms. Mogavero:

Please see the attached.

Regards,
Rebecca Stempien Coyle

Levy & Grandinetti
1120 Connecticut Ave NW
Suite 304
Washington DC 20036

Tel. (202) 429-4560
Fac. (202) 429-4564
mail@levygrandinetti.com

EXHIBIT 20

Paul Grandinetti

From: Paul Grandinetti
Sent: Monday, November 09, 2015 3:10 PM
To: Kristen Mogavero
Cc: Jess Collen
Subject: RE: FINAM v Sunkiss Thermoreactors, Inc.

Dear Kristen:

This has gone on for long enough. We will be proceeding with the filing as we see fit. Should FINAM revert back with a reasonable offer to withdraw its allegations or explanation we will consider withdrawing the motion.

Regards,
Rebecca Stempien Coyle

Levy & Grandinetti
1120 Connecticut Ave NW
Suite 304
Washington DC 20036

Tel. (202) 429-4560
Fac. (202) 429-4564
mail@levygrandinetti.com

From: Kristen Mogavero [mailto:kmogavero@collenip.com]
Sent: Wednesday, November 4, 2015 6:05 PM
To: Paul Grandinetti <mail@levygrandinetti.com>
Cc: Jess Collen <jcollen@collenip.com>
Subject: RE: FINAM v Sunkiss Thermoreactors, Inc.

Dear Rebecca,

We are in receipt of your letter dated November 2, 2015. We note your reference to October 22 (given the mailing date of the letter, we must assume that you intended November 22). Then, toward the end you recite November 5, 2015.

Regardless of the arbitrary "deadline" you seek to impose, and without addressing the merits of your letter, we note that we will respond further but first will confer with our client. As our contact is currently out of the office, any response will be forthcoming once we are able to discuss this matter with them.

Regards,
Kristen

From: Paul Grandinetti [mailto:mail@levygrandinetti.com]
Sent: Monday, November 02, 2015 5:10 PM
To: Kristen Mogavero
Cc: docket; Jess Collen
Subject: FINAM v Sunkiss Thermoreactors, Inc.

Dear Ms. Mogavero:

Please see the attached.

Regards,
Rebecca Stempien Coyle

Levy & Grandinetti
1120 Connecticut Ave NW
Suite 304
Washington DC 20036

Tel. (202) 429-4560
Fac. (202) 429-4564
mail@levygrandinetti.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S MOTION FOR SANCTIONS UNDER FED. R. CIV. P. 11, 37 C.F.R. § 11.18, AND TBMP 527.02, with Exhibits and Addendum, were served this date via First Class mail, postage prepaid, and e-mail on the Petitioner's attorneys as follows:

Ms. Kristen A. Mogavero
Mr. Jess M. Collen
COLLEN IP INTELLECTUAL PROPERTY LAW PC
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
jlindenbaum@collenip.com

November 9, 2015
Date

/s/ Rebecca J. Stempien Coyle
Rebecca J. Stempien Coyle